80-209

No. 80-

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

FELICE GELMAN, Treasurer of Citizens for LaRouche,
and
CITIZENS FOR LAROUCHE, the principal Campaign
Committee of Lyndon H. LaRouche

Petitioners,

vs.

FEDERAL ELECTION COMMISSION

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

James F. Schoener
Jenkins, Nystrom &
Sterlacci, P.C.
2033 M Street, N.W.
Suite 504
Washington, D.C. 20036

Attorney for Petitioners

QUESTIONS PRESENTED

1. Did the Court of Appeals err in sustaining the interpretation by the Federal Election Commission of provisions of the Presidential Primary Matching Payment Act, 26 U.S.C. §9033(c)(4)(B) regarding the reestablishment of matching payment eligibility?
2. Did the Court of Appeals err in construing the votes cast for "Uncommitted" as a category in the May 20, 1980 Michigan Democratic Presidential Primary as "votes cast for candidates of the same party"?
3. Did the Federal Election Commission violate the petitioners' rights under the Constitution of the United States?

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Petitioners,

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FEDERAL ELECTION COMMISSION

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Felice Gelman, as treasurer of the Citizens for LaRouche and the Citizens for LaRouche, the principal campaign committee of Lyndon H. LaRouche, a candidate for the nomination to the office of President of the United States, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on July 18, 1980.

OPINIONS BELOW

The opinion of the Court of Appeals is unreported; a copy is set forth in full in Appendix A.

JURISDICTION

The opinion of the Court of Appeals was entered on July 18, 1980. This petition for writ of certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS

The following provisions of the United States Constitution are relevant to the questions presented.

AMENDMENT I

Congress shall make no law respecting an establishment of religion or prohibiting free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in case arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process

of law, nor shall private property be taken for public use, without just compensation.

PROVISIONS OF STATE LAW

The provisions of the Michigan Compiled Law and the Ohio Revised Code Annotated which petitioner contends are relevant deal with the holding of the Presidential Primary and with the use of the term "votes cast for candidate." They are quoted in full in Appendix D.

PROVISIONS OF FEDERAL LAW

The provisions of the United States Code which petitioner contends are relevant deal with requirements for presidential candidates under the Federal Election Campaign Act and are quoted in full in Appendix D.

STATEMENT OF THE CASE

Lyndon H. LaRouche was a candidate for the office of President of the United States in 1976 and is presently seeking to be nominated as the presidential candidate of the Democratic Party at the Democratic National Convention to be held August 11, 1980.

On December 18, 1979, Mr. LaRouche, through the petitioners, Felice Gelman, treasurer, and Citizens for LaRouche, his principal campaign committee, fulfilled the requirements of Title 26 U.S.C. Section 9033(a) and (b) and established eligibility to receive primary matching funds for the 1980 Presidential Primary. Pursuant to such eligibility, petitioners were certified by the Federal Election Commission and received matching funds from the Secretary of the Treasury.

Subsequently, the Federal Election Commission determined (April 1, 1980) that, because of the results in the New Hampshire and Illinois primary elections, such eligibility would cease as of April 17, 1980. In those primaries, the candidate received "less than 10% of the votes cast for

candidates for the Democratic nomination" (emphasis supplied) (quoted from letter of termination by Respondent. *See* Appendix E, p. 39a). Said notification further stated that, " . . . you may be able to reestablish your eligibility to receive matching fund payments for qualified campaign expenditures incurred after April 17, 1980, if you receive at least 20% of the total number of *votes cast for Democratic candidates* in a presidential primary election held after March 18, 1980," (emphasis supplied). The reestablishment of eligibility referred to in the Commission letter is contained in Title 26, Section 9033(c)(4)(B) which reads:

> (B) Notwithstanding the provisions of paragraph (1)(B), a candidate whose payments have been terminated under paragraph (1)(B) *may again receive payments* (including amounts he would have received but for paragraph (1)(B) *if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him.*
> (Emphasis supplied.)

Thereafter, on May 20, 1980, in the Democratic Presidential Primary held pursuant to statute in the State of Michigan, Mr. LaRouche received more than 20% of the total vote case for all candidates in that election (*See* Appendix G, p. 46a, Certification of Vote). The candidate's name was placed on the ballot pursuant to the provisions of Michigan Compiled Law, Section 168.614 in which the Secretary of State is directed to issue a list of individuals generally accepted by the national news media as potential presidential candidates for the national political parties. The potential candidate must thereafter either file an affidavit of his willingness to have his name printed on the ballot or he may decline by doing nothing. In the Democratic Party, besides LaRouche, the Secretary of State notified President Carter, Senator Edward Kennedy

and Governor Edmund Brown, Jr. LaRouche and Governor Brown replied by affidavit that they were willing to have their names on the ballot; President Carter and Senator Kennedy sought Michigan delegates to the Democratic National Convention by the caucus method, an alternative method under Michigan law and Democratic Party rules. In these caucuses, President Carter received 7,567 votes, while Senator Kennedy received 7,793 votes. In the primary election, Lyndon LaRouche received 8,943 votes, while Governor Brown received 23,043. Governor Brown publicly withdrew and so ceased to be a candidate as defined in the Federal Act on April 1, 1980. (*See* May 28, 1980 *Memorandum*, F.E.C. General Counsel, Appendix C, p. 13a, at p. 16a.) In addition to the votes for LaRouche and Brown, there were votes for write-ins and votes for the category of "uncommitted".

Under Michigan law (Compiled Laws, Section 168.615), the names of the candidates who are certified by the Secretary of State are rotated on the printed ballot, the computer assembly or voting machine. At the end of every ballot, pursuant to the same section, there is a space for the elector to vote "uncommitted."

After the Michigan primary, petitioners filed telegrams requesting respondents to reestablish the eligibility of candidate LaRouche to obtain presidential primary matching funds under the provisions of 26 U.S.C. 9033 (c)(4)(B). (*See*, Appendix D, 26 U.S.C. 9033 (c)(4)(B) p. 18a, at 32a.) On May 29, the respondents considered the Memorandum of the F.E.C. general counsel, (*see* Appendix I, pp. 64a-83a.) and voted to deny the request (*see*, letter, June 5, 1980, Appendix B, p. 11a).

Petitioners filed a Petition to Review with the Court of Appeals of the District of Columbia Circuit to review the action of the Federal Election Commission. The Court of Appeals expedited consideration and heard oral argument July 14, 1980 and issued their opinion July 18, 1980. Such opinion sustained the Commission and so construed the Federal statute to include votes cast for the category of "uncommitted" in determining whether the petitioners

could be restored to matching funds under the Presidential Primary Matching Funds Act.

ARGUMENT

A. The Federal Election Commission and the Court of Appeals Erred in Denying Petitioner Funds Under the Presidential Matching Funds Act.

The decision of the Federal Election Commission to deny reestablishment of eligibility to petitioners (as the treasurer and principal campaign committee) as contained in the letter of June 5, 1980 does not explain the reason for denial. The transcript of the proceedings of May 29th indicates the Commission relied on the interpretation made by the Court of Appeals.*

B. No Ambiguity Exists in the Relevant Statute

Justice Felix Frankfurter in the 6th Annual Cardozo Lectures before the Association of the Bar of New York on March 18, 1947 (contained in Legal Commentaries, Sutherland, *Statutory Construction,* p. 419) stated:

> . . . Though we may not end with the words in construing a disputed statute, one certainly begins there. You have a right to think that a hoary platitude, but it is a platitude not acted upon in many

---

* The Court grounded its decision on a reverse thrust of the words of the statute. It held that votes cast as "uncommitted" must be totaled with candidate votes to determine if LaRouche met the standard of 20% of "votes cast for candidates of the same party in a primary election". The Court expanded the meaning of the word "candidate" as defined in the statute, 26 U.S.C. §9032(2). The Court of Appeals, ultimately, abandoned the statutory language and substituted their own "touchstone", viz., " . . . whether it may be said as a practical matter that the candidacy is a viable one," (*see* Appendix D, 18a, at 31a). To compensate the Court refers to the statutory language as "sterile reading of the statute . . . " (*see* Appendix D, 18a, at 31a).

arguments. In any event, it may not take you to the end of the road. The Court no doubt must listen to the voice of Congress.

Resort to legislative history as was done by counsel for respondent and by the Court is itself often ambiguous and inconclusive. In a similar situation, former Supreme Court Justice Robert Jackson said that he preferred to make decisions "by analysis of the statute instead of psychoanalysis of Congress." *United States v. Public Utilities Commission of Cal.*, 345 U.S. 295, 97 L.Ed. 1020, 73 S. Ct. 706 (1953), quoted in Sutherland, *Statutory Construction*, Sec. 48.02.

The clear meaning of the words in this statute need nothing further to obtain the intent of Congress. The use of the phrase "total number of votes cast for candidates" is often used in state election statutes (*see*, for example, Appendix D, p. 18a, at 36a, Ohio, O.R.C.A. Section 3515.011, where 1/2 of 1% of the total vote cast for the winning candidate plus the total vote cast for the defeated candidate is the basis for a recount at state expense). Over 60% of the states use some form of figure based on *vote cast for candidates* to initiate recounts, *see Contested Elections and Recounts*, Vol. I, The Federal Perspective, F.E.C. publication, p. 51. To use the confusing category of "total voters", "uncommitted", "eligible voters" would be to add a numerical confusion to the Presidential Primary Funding Act that does not now exist. In many instances, the Canvass does not total such a vote. In determining those other figures, the "spoiled ballots", "challenged ballots", "voters who did not vote in a part of the election" and other unknown factors become involved. Here Congress used clear words, easily ascertainable, "total vote cast for candidates". The Commission and the Court of Appeals choose to ignore this plain meaning.

This approach ignores fundamentals of statutory construction. It ignores a) literal interpretation, b) plain meaning rule, c) clear and unambiguous words, d) whole

statute construction, e) each word given effect and f) definitions contained in the statute being construed. See 2A, Sutherland, *Statutory Construction*, Chapter 46. No ambiguity can be found in the words of the statute involved in this case.

As the Court of Appeals said in *Lubrizol v. Environmental Protection Agency*, 191 U.S. App. D.C. 225, 562 F.2d 807 (1977) at 819:

> In a period of seemingly growing popular conviction that government agencies too often transgress the statutorily imposed boundaries of their authority, courts, in reviewing administrative action, must be alert to confine that *action within* those boundaries.

The Court of Appeals has confused the boundaries set by Congress and assisted in expanding them.

C. Respondents' Construction of the Term "Uncommitted" to Equate With "Candidate" is Clearly Erroneous.

The category "uncommitted" in the Michigan Presidential Primary ballot is required by statute, Michigan Compiled Laws Section 168.615, (Appendix D, p. 18a, at 36a). The category is similar to the category "none of the names shown" in Wisconsin Election Law. *See LaFollette v. Democratic Party of the United States*, 287 N.W. 2d 519 at 533. It is a category that has been used in primary elections for many years and must have been known to the Members of Congress when the Presidential Primary Matching Payment Account Act was passed (26 U.S.C. Section 9032 *et seq.*). It certainly could not be confused with the word "candidate".

"Candidate" is defined in the primary section of the Act, 26 U.S.C. Section 9032 (2); it is also defined in the Presidential Election Campaign Fund Act, 26 U.S.C. 9002(2), and it is also defined in 2 U.S.C. Section 431(2). (*See*, Appendix D, p. 18a, at pp. 30a-31a.) In *none* of those sections does the "uncommitted" language appear. Nowhere in all of the Reports by Congress concerning Election Laws does the Congress indicate "uncommitted"

is a "candidate."

Does "uncommitted" have a principal campaign committee as required by 2 U.S.C. Section 432(e)?

Does "uncommitted" have to file reports as required by 2 U.S.C, Section 434?

Does "uncommitted" have an entitlement to Federal funds under 26 U.S.C. Section 9034?

Does "uncommitted" submit to examination and audits under 26 U.S.C. Section 9038?

Can "uncommitted" ask for a recount or contest under any state laws?

Can "uncommitted" be elected to office?

It is submitted that an attempt to equate "uncommitted" with a "candidate" does not wash. In the familiar legal encyclopedia, *Words and Phrases*, Vol. 6, there appear 39 citations to the word "candidate". Not one citation even mentions the word "uncommitted".In most definitions it refers to "an individual" or "a person" who has taken certain steps to qualify for nomination or election to office. Counsel for petitioners have been unable to find any dictionary that remotely justifies respondents' strained construction. To say that a faceless "uncommitted" is a candidate is to deny plain, simple, unambiguous language and logic.

By so doing, the general counsel to respondent attempts to take "total vote" rather than "total number of votes cast for candidates of the same party". In this, counsel attempts to "pick and choose" the language that will meet his desired result. He gives some words effect while ignoring others. Such construction is absurd and improper.

D. The Certified Vote from the Michigan Presidential Primary Demonstrates that Lyndon LaRouche Received More Than 20% of the Total Vote for Candidates in that Primary Election.

In Petitioners' Appendix is the Certified Vote for the Presidential Primary Election of May 20, 1980. This certified vote shows the Michigan total vote as follows:

Edmund Brown, Jr.	Lyndon LaRouche	Scattering	Uncommitted	Total Vote
23,043	8,948	10,018	36,385	78,424

In the *Memorandum to the Commission* (*see* Appendix C, pp. 13a-14a), the general counsel of the respondent plays a numbers game with the statistics in the Michigan primary; he utilizes the early returns which were considerably changed in the final certification. Nonetheless, respondent must include the statistics for "uncommitted" as the *only* way to deprive petitioners of their "20% of total vote" as referred to in the statute (26 U.S.C. 9033).

Petitioners submit that a correct computation of "total vote for candidates" as called for by the statutes is as follows:

		Percentage
LaRouche	8,948	47.18%
Scattering	10,018	52.82%
TOTAL votes for Candidates	18,966	100.00%

Petitioners assume that the Brown vote should not be included in the calculation under the statute since he was no longer a "candidate" as defined in 26 U.S.C. Section 9032(2) which states:

> The term "candidate" shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States.

As respondent's counsel notes, Governor Brown had withdrawn his name on April 1, 1980 as an active candidate. But, assuming, *arguendo*, that his name should be included, the computation would still result in qualifying petitioner:

Brown	23,043	54.85%
LaRouche	8,948	21.30%
Scattering	10,018	23.85%
TOTAL votes for Candidates	42,009	100.00%

E. The Denial of Presidential Primary Matching Funds Violates Petitioner's First and Fifth Amendment Rights.

The denial to petitioners of Presidential Primary Matching Funds amounts to a denial of Constitutional rights for petitioners. The right of a candidate to run for political office is a Federal Constitutional right, *Johnson v. Cushing*, (D.C. Minn. Civ. No. 4-78-327) Jan. 17, 1980 (3 judge panel). It is a right under the First Amendement, *Manusco* v. *Taft*, 476 F.2d 187 (1st Cir. 1973).

As in *Williams v. Rhodes*, 393 U.S. 23, 89 S. Ct. 5, 21 L.Ed. 24 (1968), the rights of the supporters of candidate LaRouche to associate to advance their political beliefs will be infringed upon by the denial of matching funds as requested. The debate of the issues will be curtailed, a voice will be silenced at the selection of delegates, the platform debates, and the competition for their votes on candidates and issues will be removed. This case must be considered in light of the expressions of the Supreme Court in First Amendment cases:

In *New York Times v. Sullivan*, 376 U.S. 254, 845 S. Ct. 710, 11 L. Ed. 2d 688 (1964) the court said:

> The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. . . . *Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues shoula be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attocks on government and public officials officials . . .*" (emphasis added)

The Supreme Court further noted the need for funds in a political campaign in *Buckley v. Valeo*, (1976) 424 U.S. 1 at 13.

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideals in today's mass society requires the expenditure of money.

In a footnote to the above quote, the Court added:

> Being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline.

In fact, the very act of fund raising is different if it is for matching funds under respondent's regulations than it is if no matching funds are involved. The need and importance of the Presidential Primary Matching Funds is noted in the Annual Survey of American Law (1976) N.Y.U., at p. 680:

> The matching fund system attracted a wider field of candidates than had appeared in past primaries. It may also have helped an obscure governor receive the Democratic nomination despite an initially narrow base of support. During the general election, the spending limitations denied the Republican nominee his traditional fundraising advantage; in light of the close results, this new spending parity must have been a critical factor in determining the outcome.

Congress has authorized the respondents to act in an area of great delicacy. The F.E.C. may favor the First Amendment right of free speech and association of some

candidates* or it may chill the same by undue audits and investigations of contributors. It may infringe on Constitutional rights in the name of regulation.

> In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom.
> *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940).

> Unduly must mean not more than necessary . . .
> Burger, Chief Justice, concurrence, *Buckley v. Valeo*, *supra*, at p. 4

The Constitutional right of Lyndon H. LaRouche to compete for the highest elective office is seriously impaired by respondent's arbitrary actions and interpretation of the financing act.

Chief Justice Burger foresaw some of the problems which have arisen to challenge our Constitutional system where public financing of politics is involved. Here LaRouche, like other political leaders without large media backing, finds every measure of control and surveillance of the respondent is used against him, while others are favored with a more liberal interpretation of the same questions.

The Chief Justice observed:

> Recent history shows dangerous examples of systems with a close, "incestuous" relationship between "government" and "politics"; the Court's opinion simply dismisses possible dangers by noting that: "Subtitle H is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and

---

* The most recent actions of the F.E.C. in continuing eligibility of George Bush for matching funds after his active campaigning all but ceased appears to be a preferential treatment while petitioners have been denied their reestablishment of eligibility for questionable reasons.

participation in the electoral process, goals vital to a self-governing people."
Buckley v. Valeo (Concurring Opinion) *supra,* at p. 15

Petitioners submit that the very action of Congress in the selection of the 10% cut-off and the 20% reestablishment figures for federal funds may in itself be Constitutionally infirm as applied to candidate LaRouche. Senator Robert Taft, when offering the amendment which provided the cut-off and reestablishment provisions, underlined this arbitrariness:

> Critics will undoubtedly charge that the levels I have set are arbitrary, but this legislation is full of arbitrary decisions . . . *Cong. Rec.* Senate, p. 439, March 18, 1976.

Contrast Senator Taft's admission of Congressional arbitrariness with his grandfather's words as Chief Justice. The Chief Justice observed "that the due process and equal protection clauses are 'associated' and that '[i]t may be that they overlap, that a violation of one may involve at times the violation of the other, but the sphere of the protection they offer are coterminous . . . [Due process] tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law." *See*: *Stewart Machine v. Davis*, 301 U.S. 548 (1937); *Truax v. Corrigan*, 257 U.S. 312. See also *Buckley v. Valeo*, 424 U.S. 1, at 93.

Respondent's arbitrary interpretation of the law combined with the arbitrariness of the original enactment unite to deny petitioners equal protection and due process. The Constitutional requirement mandates that Presidential candidates be treated substantially equally unless an articulable, non-invidious rationale for another treatment can be shown. Any treatment that acts to curtail petition-

ers and the LaRouche supporters of their Constitutional right of free political expression and association while assisting others, must be construed strictly and the construction that furthers such associational rights must be adopted.

The First Amendment cannot be replaced by a Federal agency determining (presumably on a case-by-case basis) the "viability" of a candidate. No such selection of favored candidates or "practical test" was contemplated by the Act, and, if contemplated it would render the Act patently unconstitutional.

CONCLUSION

The order of respondents denying petitioners the reestablishment of their eligibility for Presidential Primary Matching Funds is totally unjustified. It denies the clear words of the statute. Respondent has strained definitions beyond credulity and has resorted to inapposite cases to try to justify their decision. This order ignores the fundamental First Amendment rights involved in a political campaign and the need for prompt and adequate funding to expound political views. The very delay in this funding amounts to such denial in view of "the policy underlying section 9036(a) which is to provide prompt payments to eligible candidates", *LaRouche* v. *F.E.C.*, 77-1184, p. 21

The order of the Federal Election Commission should be reversed.

Respectfully submitted,
/s/James A. Schoener

JAMES A. SCHOENER
Jenkins, Nystrom
& Sterlacci, P.C.
Attorneys for Petitioner
2033 M Street, N.W.
Suite 504
Washington, D.C. 20036
(202) 293-2505

Dated: _____ 1980

APPENDIX

Appendix A

TO BE PRINTED AT A LATER DATE

United States Court of Appeals

for the District of Columbia Circuit

[FILED JULY 18, 1980]

[GEORGE A. FISHER , CLERK]

No. 80-1646

FELICE M. GELMAN, Treasurer
Citizens for LaRouche,

CITIZENS FOR LAROUCHE, INC.,
the Principal Campaign Committee
of Lyndon H. LaRouche,

Petitioners

v.

FEDERAL ELECTION COMMISSION,

Respondent

Petition for Review of an Order of the
Federal Election Commission

Argued July 14, 1980

Decided

James F. Schoener, for petitioners.

Kathleen Imig Perkins, Assistant General Counsel, Federal Election Commission with whom *Charles N. Steele*, General Counsel, *Marsha G. Gentner*, Attorney, Federal Election Commission were on the brief for respondent.

Before: WRIGHT, *Chief Judge*, WILKEY and MIKVA, *Circuit Judges*

Opinion for the Court filed by *Circuit Judge* MIKVA

No. 80-1646—Felice Gelman, Treasurer, Citizens for LaRouche v. Federal Election Commission

MIKVA, *Circuit Judge:* Lyndon LaRouche is a candidate for the Democratic Party's nomination for President of the United States. Petitioners are Citizens for LaRouche, Inc., Mr. LaRouche's principal campaign committee, and Felice M. Gelman, treasurer of Citizens for LaRouche. Pursuant to the provisions of the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042 (1976), Mr. LaRouche lost his eligibility for federal matching funds because of his failure to obtain a sufficient number of votes in two successive primary elections that he entered. The statute provides, however, that a candidate may reestablish his eligibility in a subsequent primary election. Petitioners contend that Mr. LaRouche satisfied the prerequisites of the statute by garnering at least 20 percent of the vote on the Democratic side in the Michigan primary in May of this year. They contest the Federal Election Commission's (FEC or the Commission) denial of their request to resume payment of matching funds. For the reasons that follow, we affirm the Commission's determination that Mr. LaRouche has failed to reestablish his eligibility to receive federal matching funds.

I.
BACKGROUND

A. *The Statute*

The Presidential Primary Matching Payment Account Act (the Act) was enacted in 1974[1] and authorizes the creation of the Presidential Primary Matching Payment Account, 26 U.S.C. § 9037(a) (1976). Every eligible candidate for the presidential nomination of his or her party is entitled under the Act to receive from the account funds matching every contribution to the candidate's campaign, up to $250 per contribution.[2] To become eligible to receive matching funds, a candidate must agree to maintain records of campaign expenses and contributions and to cooperate with the FEC's audits and examinations.[3] A candidate must also demonstrate that his candidacy enjoys at least a modicum of public support by collecting "matching contributions which in the aggregate, exceed $5,000 in contributions from residents of each of at least 20 States," 26 U.S.C. § 9033(b) (3) (1976). Qualifying contributions may not exceed $250, *id.* § 9033(b) (4).

---

1. Pub. L. No. 93-443, § 408(c), 88 Stat. 1297 (1974).

2. 26 U.S.C. §9034(a) (1976). The federal payment will match gifts received by the campaign "on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such candidate is seeking nomination." *Id.*

3. 26 U.S.C. § 9033(a) (1976) provides:

> (a) Condition To be eligible to receive payments under section 9037, a candidate shall, in writing—
>
> (1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses,
>
> (2) agree to keep and furnish to the Commission any records, books, and other information it may request, and
>
> (3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

Congress amended the Act in 1976[4] to provide that matching payments are to be terminated for any candidate who ceases to campaign actively in more than one state, 26 U.S.C. § 9033(c) (1) (A) (1976), or whose performance at the polls indicates that his candidacy no longer enjoys even minimal public support. The absence of public support is established by the candidate's failure to receive 10 percent or more "of the number of votes cast for all candidates of the same party for the same office," *id.* § 9033(c)(1)(B). The 1976 amendments also provide, however, that any such candidate can reestablish his eligibility to receive matching funds by demonstrating, again through his performance at the polls, that his candidacy enjoys some minimal level of public support:

> (4) Reestablishment of eligibility
>
> . . . .
>
> (B) Notwithstanding the provisions of paragraph (1)(B), a candidate whose payments have been terminated under paragraph (1)(B) may again receive payments (including amounts he would have received but for paragraph (1) (B)) if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him.
> 26 U.S.C. § 9033 (c)(4)(B) (1976).

B. *The Commission's Decision*

On December 18, 1979, the FEC certified that Mr. LaRouche was eligible to receive matching fund payments under the Act.[5] Mr. LaRouche thereafter received less than 10 percent of the total votes cast for candidates for

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4. Pub. L. No. 94-283, § 306, 90 Stat. 499 (1976).
5. Petitioner's Appendix (PA) 1.

the Democratic presidential nomination in two consecutive primaries: in New Hampshire on February 26, 1980, and in Illinois on March 18, 1980. The FEC accordingly notified him that it would terminate matching payments for campaign expenditures incurred after April 17, 1980.[6]

On May 20, 1980, the state of Michigan held its presidential primary. The ballot listed two candidates for the Democratic nomination: Governor Edmund G. Brown, Jr. and Lyndon LaRouche.[7] In addition, the ballot permitted a vote to be cast for "Uncommitted" and proveded a space for the name of a write-in candidate.[8]

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6. PA 2-3. 26 U.S.C. § 9033(c)(1) provides in relevant part that

> no payment shall be made to any individual under section 9037—
>
> . . . .
>
> (B) more than 30 days after the date of the second consecutive primary election in which such individual receives less that 10 percent of the number of votes cast for all candidates of the same party for the same office in such primary election.

7. The Michigan Democratic Party did not participate in the Michigan primary election, and, at the state party's request, both President Carter and Senator Kennedy withdrew from the primary. Respondent's brief at 8, app. 5a. The withdrawals were the result of a conflict between Michigan state election laws, which required an "open" primary in which any registered voter could vote on either the Democratic or Republican side of the ballot, *see Ferency V. Austin*, No. G80-193 CA5, slip op. at 2 (W.D. Mich. Apr. 21, 1980 *reprinted in* PA 31, 32; Respondent's brief at 8, and the delegate selection rules of the Democratic National Committee, which limit "[p]articipation in the delegate selection process in primaries or caucuses . . . to Democratic voters only who publicly declare their party preference and have that preference publicly recorded," *Delegate Selection Rules for the 1980 Democratic National Convention* § 2, at 3 (June 1978); Respondent's brief at app. 9a. The state party organized a statewide caucus for the selection of delegates, a method which was expressly upheld in *Ferency*.

8. Petitioner's brief at 4; Joint Appendix (JA) 6.

The results of the voting on the Democratic side were as follows:

Brown	23,043
LaRouche	8,948
Uncommitted	36,385
Write-ins	10,048

Of total votes cast (78,424), the percentage distribution was as follows:

Brown	29.4%
LaRouche	11.4%
Uncommitted	46.4%
Write-ins	12.8%

On the basis of the results in the Michigan primary, Mr. LaRouche requested that the FEC resume payment of matching funds. He reasoned that the Act requires that a candidate receive 20 percent of the "votes cast for *candidates* of the same party in a primary election," and that the votes cast for Governor Brown (who ceased to be an active candidate on April 1, 1980) and for "Uncommitted" should therefore not be included in determining whether he had satisfied the 20 percent requirement for reestablishing eligibility. If the votes cast for Governor Brown and for "Uncommitted' are not taken into account, the Democratic votes in the Michigan primary total 18,966, with 47.1 percent for LaRouche and 52.9 percent for various write-in candidates; if the votes cast for Governor Brown (but not the uncommitted) are included as well, the percentages are 54.8 percent for Brown, 23.9 percent for the write-ins, and 21.3 percent for LaRouche.[9]

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9. These figures are based on the final totals as certified by Michigan's Secretary of State. *See* PA 18-26. Mr. LaRouche's request for resumption of matching funds was premised upon slightly different figures because the official results were not available at the time he made his request. *See* PA 8-9. The difference between the two sets of figures, however, do not affect either the reasoning or the outcome of this case.

The Commission considered Mr. LaRouche's claim at its May 29 meeting and voted unanimously, one Commissioner absent, to deny his request for matching funds.[10]

II.
DISCUSSION

This petition for review presents us with an issue of first impression—the proper interpretation of the phrase"votes cast for candidates of the same party in a primary election," as that language is used in the reestablishment of eligibility provision, 26 U.S.C. § 9033 (c)(4)(B) (1976). The question to be decided is whether that phrase refers merely to votes cast for individual, active candidates or to votes cast for any and all voter preferences within a single party, including those cast for inactive candidates, for write-ins, and for "uncommitted." We hold that the latter, more expansive reading of the phrase is consistent with the language adopted by Congress and with the apparent purpose of the 1976 amendments to the Act.

Petitioners argue that the word "candidate" must take its meaning from the Act itself, which defines "candidate" as "an individual who seeks nomination for election to be President of the United States . . . [and] who is . . . actively conducting campaigns in more than one State." 26 U.S.C. § 9032(2) (1976). Thus, petitioners assert, "votes cast for *candidates*" can only be those votes cast for *individuals* who are actively campaigning in more than one state. This interpretation would eliminate from the Michigan Democratic primary results all votes cast for Governor Brown, who by May 20 had ceased to campaign actively in more than one state, and votes cast for "Uncommitted," because "Uncommitted" does not refer to any individual candidate.[11]

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10. JA12-37.

11. Such an interpretation could conceivably eliminate some or all of the votes cast for write-in candidates, since many of such candidates might not satisfy the statutory definition on which petitioners rely.

Petitioners' construction ignores the fact that the word "candidate" does not appear in the statute in a vacuum. The complete phrase to be construed and applied by the FEC is "candidates of the same party in a primary election." Petitioners' narrow focus on the word "candidate," to the exclusion of the phrase within which that word appears, results in a strained and artificial construction that is at odds with the Act's underlying concern that federal matching funds should go only to those candidates who have demonstrated at least minimal public support for their candidacies.

When the entire phrase is read as a whole, less emphasis is placed upon the word "candidate," and more emphasis is placed upon the total vote cast under one or another party heading. Congress intended by that focus to keep separate vote computations for each of the political parties. The viability of a particular candidacy can hardly be measured by including the votes cast for candidates of other political parties.

As enacted in 1974, the Act premised eligibility upon an ability to raise funds through public contributions in at least 20 states. The 1976 amendments established an equally pragmatic test for determining whether a candidate should continue to receive matching funds: his ability to capture 10 percent or more of the vote within his party in two consecutive primary elections. Similarly, reestablishment of eligibility was made to turn on voter support for the candidate. In all of these determinations, the touchstone is whether it may be said as a practical matter that the candidacy is a viable one. As Senator Taft noted, passage of the 1976 amendments "express [es] the sense of the Congress that the public financing program is not to support campaigns that are going nowhere fast"122 *Cong. Rec.* 7174 (1976). The measuring stick for such viability must necessarily include all of the options that voters of a particular political party in any given state can exercise. If state law allows a "no preference" or "none of the above" option, as it does in Michigan, that is just as valid a meter of a candidate's popularity as a head-to-head confrontation.

Petitioners' sterile reading of the statute ignores Congress' practical purpose and exalts literalness over common sense. Out of 78,424 votes cast on the Democratic side of the Michigan primary ballot, 88.6 percent were not cast for Mr. LaRouche. Through a narrow reading of the Act, Mr. LaRouche would have us conclude that 88.6 percent nonsupport translates into 41.4 percent support. No amount of statutory construction can reach such an illogical conclusion.

Our reading of the statute is also consonant with the FEC's past practice, which should be given the deference ordinarily accorded any interpretation of a statute by the agency charged with its enforcement. *Udall v. Tallman*, 380 U.S. 1, 16 (1965); *Kyle v. Interstate Commerce Commission*, 609 F. 2d 540 (D.C. Cir. 1979). At oral argument, counsel for the Commission stated that, in determining whether a candidate has satisfied the 10 percent minimum, the FEC has consistently computed the candidate's share of the total votes cast within a party designation. We note that the FEC's approach in evaluating Mr. LaRouche's request was consistent with this long-standing practice and is thus entitled to considerable deference from this court. *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267 (1974); *District of Columbia v. Payne*, 374 F.2d 261 (D.C. Cir. 1966.)

Where the agency's interpretation is supported by the language and overall purpose of the statute being construed, a reviewing court's work is greatly simplified. And where petitioner's construction leads to a conclusion that is illogical or at odds with the apparent purpose of the statute, there can be no doubt as to the correctness of the agency's position.[12]

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12. It is conceivable that all of the candidates in a particular state primary could be marked for disqualification, if 90 percent or more of the voters opted for "none of the above." Given the past construction of section 9037(c)(1)(B) by the Commission, and the clear expression of Congress' intent, as detailed herein, we assume the Commission would do its duty no matter who was pinched.

We thus find that the Commission's interpretation of the 20 percent rule in 26 U.S.C. § 9033(c)(4) (B) (1976) is a correct and complete basis for its denial of petitioners' request. Accordingly, we do not reach the Commission's remarkable assertion that the Michigan primary election was not an "election" for the purposes of the Act.[13] The Commission's denial of petitioners' request is

AFFIRMED.

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13. Petitioners also challenge the Commission's decision as a deprivation of First and Fifth Amendment rights. This argument is without merit. *See Buckley v. Valeo,* 424 U.S. 1, 96 (1976) (citations omitted):

> Congress' interest in not funding hopeless candidacies with large sums of public money necessarily justifies the withholding of public assistance from candidates without significant public support. Thus, Congress may legitimately require "some preliminary showing of a significant modicum of support" as an eligibility requirement for public funds. This requirement also serves the important public interest against providing artificial incentives to "splintered parties and unrestrained factionalism."

In their petition for review, petitioners raised a second issue—whether the Commission correctly refused to postpone the date of its post-primary audit of petitioners' books and records. Although this issue was raised in petitioners' motion for stay pending appeal, which this court denied June 19, 1980, it was not briefed by the parties, nor was it raised on oral argument. We will assume that petitioners have abandoned this issue, and we do not address it in our opinion.

Appendix B

[80-1646]

[logo of the Federal Election Commission]

June 5, 1980

Certified Mail
Return Receipt Requested

Felice M. Gelman
Treasurer, Citizens for LaRouche
Box 976, Radio City Station
New York, New York 10019

Dear Ms. Gelman:

The Commission has received your letter of May 7, 1980, requesting that Citizens for LaRouche ("CFL") be provided with a report of the auditors' findings with respect to the audit fieldwork of CFL which was completed on April 25, 1980, and to delay the commencement of the final audit pending the receipt of the written findings. Contrary to your assertions, no "promise" was made to deliver such a report to the Committee on May 5, 1980. The Commission will provide CFL with written recommendations in addition to the recommendations related to you at the April 25, 1980 exit conference. Until such time, the Committee has the benefit of the comments provided at the "exit conference". Accordingly, the post-primary audit of CFL, which must timely be performed by the Commission pursuant to 26 U.S.C. § 9038 (a), will not be delayed on that basis.

The Commission is also in receipt of your two telegrams dated May 21 and 27, 1980, requesting the Commission to reestablish the eligibility of Lyndon LaRouche to receive matching funds based on the results of the Michigan contest of May 20, 1980. On May 29, 1980, the Commis-

sion determined that none of the grounds set forth in your telegrams support a determination that Mr. LaRouche has reestablished his eligibility for matching funds. Therefore, Mr. LaRouche's date of ineligibility on or after which he may not receive matching fund payments remains April 17, 1980, as previously determined.

In a separate determination, the Commission agreed to postpone the date of the post-primary audit scheduled for June 2, 1980 until June 9, 1980. The Commission decided to grant a one week postponement of its audit on the basis that proceeding with the audit might interfere with the Committee's activities during the week of the June 3, 1980 primaries.

If you have any questions about these matters, please do not hesitate to telephone Robert Bogin or Marsha Gentner at (202) 523-4529.

Sincerely,
/s/Max L. Friedersdorf
MAX L.
FRIEDERSDORF
Chairman

cc: James F. Schoener
Jenkins, Nystrom & Sterlacci, P.C.

Appendix C

[logo of the FEC]

AGENDA DOCUMENT #80-189

AGENDA ITEM
For Meeting on 5-29-80
Agenda Item No.: III
Exhibit No. : III

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

80 MAY 28 P2:42

May 28, 1980

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele [initialed]
General Counsel

SUBJECT: Lyndon LaRouche—Request for Reestablishment of Eligibility

In a telegram dated May 21, 1980, the principal campaign committee for Lyndon LaRouche has requested that the Commission determine that he has established reeligibility for matching funds based on the contest held May 20, 1980, in Michigan. At this time, the Secretary of State of Michigan has not certified the election results. However, upon information received by telephone with the Division of Elections, the unofficial results of the Democratic contest is as follows: uncommitted-35,757;

Brown-22,904; LaRouche-8,783; and write-ins-1,824. Mr. LaRouche contends that in 26 U.S.C. § 9033(c)(4), Congress intended to establish not that a candidate needed 20% of votes cast to establish reeligibility, but rather only 20% of votes cast for candidates eligible under Title 26 primary matching funds.

For the reasons set forth below, the Office of General Counsel recommends that the Commission determine that Mr. LaRouche did not receive the requisite percentage of the vote in the Michigan contest of May 20, and thus has not reestablished his eligibility for matching funds.

Background

The May 20, 1980, election was held pursuant to Michigan law. M.C.L.A. § 168.613. This provision states in part:

> On the third Tuesday in May, in each presidential election year, a statewide presidential primary election shall be conducted in accordance with this Act for each political party that received greater than 5% of the total vote cast nationwide in the last presidential election.

State law, (M.C.L.A. § 168.620), provides that the Democratic Party should file with the Secretary of State the rules and procedures which it will use in allocating its delegates to the national convention, and if the Democratic Party fails to issue these rules by December 31, 1979, as required by law, the Secretary of State is then required to issue his own rules "to the extent that they are necessary" for the appropriate implementation of the primary. In late 1979 the Democratic Party of Michigan concluded that because of conflict with the Democratic National Committee rules, it would instead select its delegates through a caucus. Thereafter, a civil action was filed in federal district court seeking a declaratory judgment that the Democrats were obligated to file with the Secretary of State the rules and procedures which it will

use in allocating its delegates to the national convention pursuant to § 620. At the request of the party, President Carter and Senator Kennedy requested that the Secretary of State remove their names from the ballot; only Governor Brown and Mr. LaRouche consented to have their names appear on the ballot.

On April 21, 1980, the district court held, based on *Cousins V. Wigoda*, 419 U.S. 477 (1975), that the Michigan presidential primary statute is unconstitutional as applied to the Democratic Party because Michigan law attempts to exclusively preempt the party's delegate selection process. *Ferency v. Austin*, G80-193CA5 (W.D. Mich.). That decision sets forth the background to this dispute, including the history of the dispute between the state and the Democratic Party.

Analysis

26 U.S.C. § 9033 (c)(4)(B) states that "a candidate whose payments have been terminated under paragraph (1)(B) [LaRouche was determined ineligible to incur qualified campaign expenses under paragraph (1)(B)] may again receive payments (including amounts he would have received but for paragraph (1)(B)) if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him." *See* 11 C.F.R. § 9033.7(b).

The 20% provision was enacted in 1976, following criticisms of the matching fund system as financing non-serious candidates. It was introduced by Senator Taft on the floor on March 18, 1976. There was no comparable provision in the House bill. The Conference Report explains that the purpose of the Senate amendment was that a candidate be reinstated when he received "20% or more of the votes cast." The Senate version was adopted by the conferees. H.R. Rep. No. 1057, 94th Cong., 2d Sess. 75,76 (1976).

Explanation of the amendment on the Senate floor of the purpose of the 20% rule was similar. Thus, its sponsor,

Senator Taft, stated the provision was to allow a candidate to become eligible "if he goes into a further primary without the public financing involved and receives more than 20% of the vote in that future primary." 122 *Cong. Rec.* 3787. In colloquy with Senator Clark, who feared that the amendment would put serious candidates at a disadvantage, Senator Taft reiterated that getting 20% of the vote would restore a candidate to matching fund status. 122 *Cong. Rec.* 3789.

In the face of this history, Mr. LaRouche argues that the statutory phrase refers only to "candidates" within the meaning of the matching fund act and that, accordingly, votes cast for "uncommitted" or "Governor Brown" (who publicly declared that he no longer is a candidate for the Democratic nomination) should not be counted by the Commission in its computation.[1] By interpreting the scope of the 20% rule in such a limited fashion, Mr. LaRouche takes the position that he received more than 20% of the votes cast for candidates in the Michigan primary. Nothing suggests however that Congress, by inserting the phrase "for candidates of the same party," into the statutory provision was attempting to limit the scope of the 20% rule. Rather, Congress was merely attempting to state that a candidate would be required to receive 20% of the votes cast in his party's primary, rather than 20% of

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1. After the Wisconsin primary of April 1, 1980, Governor Brown publicly announced that he will not be actively conducting campaigns in more than one state and thus is not a candidate pursuant to 26 U.S.C. § 9032(2). There were a total of 69,278 votes cast in the Democratic May 20 contest. Lyndon LaRouche received 12.7% of this vote. Subtracting from the 69,278 total, the votes cast for Governor Brown and the write-ins, Lyndon LaRouche received 19.73% of the vote. Thus, a determination of whether Mr. LaRouche received 20% or more of the Michigan vote hinges on the inclusion of the uncommitted votes in figuring the percentage. This being so, the analysis in the memorandum will primarily focus on whether to include the uncommitted vote for purposes of determining the percentage of the vote Lyndon LaRouche received on May 20.

the total votes cast in all party primaries. This conclusion is also consistent with the language of the statute dealing with such primary elections: those in which the voters are polled "for the expression of a preference for the nomination of persons for election to the office of President of the United States." Certainly, twenty percent of the Michigan voters did not express a preference for Mr. LaRouche's nomination for president. Consequently, the Office of General Counsel submits that the Commission should conclude that because Mr. LaRouche garnered unofficially only 8,793 out of 69,278 votes cast, he received less than 20% of the vote in the Michigan primary.

While the Office of General Counsel submits that the Commission should conclude that Mr. LaRouche has not reestablished his eligibility on this ground, the holding of the district court that the statute under which Michigan had originally established this election is unconstitutional is an alternate basis for a Commission determination. Thus, under the relevant provision of the matching fund act, contests for the expression of a presidential preference are considered an election. Here, however, due to a constitutional infirmity, an election originally established to elect delegates did not serve that function. The party determined that it would not comply with the rules and requirements of the state's primary election law, and leading candidates for the nomination of the party withdrew at the party's request. The resulting contest does not seem to be a primary within the meaning of the matching fund act.

Recommendations

1. The Commission should determine that none of the grounds set forth in the May 21, 1980, telegram by the LaRouche Committee support a determination that Mr. LaRouche has reestablished his eligibility for matching funds.
2. Proceed with the audit as scheduled.

Appendix D

TITLE 2. THE CONGRESS

Chapter 14—Disclosure of Federal Campaign Funds

§431. Definitions

When used in this Act:

(2) The term "candidate" means an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election—

(A) if such individual has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000; or

(B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of $5,000 or has made such expenditures aggregating in excess of $5,000.

§432. Organization of Political Committees

(e) *Principal and additional campaign committees; designations, status of candidate, authorized committees, etc.*

(1) Each candidate for Federal office (other than the nominee for the office of Vice President) shall designate in writing a political committee in accordance with paragraph (3) to serve as the principal campaign committee of such candidate. Such designation shall be made no later than 15 days after becoming a candidate. A candidate may designate additional political committees in accordance with paragraph (3) to serve as authorized committees of such candidate. Such desig-

nation shall be in writing and filed with the principal campaign committee of such candidate in accordance with subsection (f)(1) of this section.

(2) Any candidate described in paragraph (1) who receives a contribution, or any loan for use in connection with the campaign of such candidate for election, or makes a disbursement in connection with such campaign, shall be considered, for purposes of this Act, as having received the contribution or loan, or as having made the disbursement, as the case may be, as an agent of the authorized committee or committees of such candidate.

(3) (A) No political committee which supports or has supported more than one candidate may be designated as an authorized committee, except that—

(i) the candidate for the office of President nominated by a political party may designate the national committee of such political party as a principal campaign committee, but only if that national committee maintains separate books of account with respect to its function as a principal campaign committee; and

(ii) candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.

(B) As used in this section, the term "support" does not include a contribution by any authorized committee in amounts of $1,000 or less to an authorized committee of any other candidate.

(4) The name of each authorized committee shall include the name of the candidate who authorized such committee under paragraph (1). In the case of any political committee which is not an authorized committee, such political committee shall not include the name of any candidate in its name.

(5) The name of any separate segregated fund

established pursuant to section 441b(b) shall include the name of its connected organization.

§434. Reporting requirements

(a) *Receipts and disbursements by treasurers of political committees; filing requirements.*

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate—

(A) in any calendar year during which there is a regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports:

(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election;

(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and

(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter; except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B) in any other calendar year the following

reports shall be filed:

(i) a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31; and

(ii) a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year.

(3) If the committee is the principal campaign committee of a candidate for the office of President—

(A) in any calendar year during which a general election is held to fill such office—

(i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $100,000 or made expenditures aggregating $100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year: such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of each month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year;

(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a pre-election report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and

(iii) if at any time during the election year

a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and

(B) in any other calendar year, the treasurer shall file either—

(i) monthly reports, which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month; or

(ii) the quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either—

(A) (i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year;

(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

(iv) in any other calendar year, a report covering the period beginning January 1 and ending

June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii)) is sent by registered or certified mail, the United States postmark shall be considered the date of filing of the designation, report, or statement.

(6) (A) The principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsec-

tion shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one preelection report for each election and one post-election report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(b) *Contents of reports.* Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and the calendar year,

the total amount of all receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of title 26;

(3) the identification of each—

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the re-

porting period, together with the date and amount of any such contribution;

(C) authorized committee which makes a transfer to the reporting committee;

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount of value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of such receipt; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year, together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year, the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate;

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee—

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 441a(d) of this title; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 441a(b);

(5) the name and address of each

(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;

(D) person who receives a loan repayment

from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6) (A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each—

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at

the request or suggestion of, any candidate, or any authorized committee or agent of such committee;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 441a(d) of this title, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year; and

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

(c) *Statements by other than political committees; filing; contents; indices or expenditures.*

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information

required under subsection (b)(3)(A) of this section for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2) of this section, and shall include—

(A) the information required by subsection (b)(6)(B)(iii) of this section, indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excsss of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

Any independent expenditure (including those described in subsection (b)(6)(B)(iii) of this section) aggregating $1,000 or more made after the 20th day, but more than 24 hours, before any election shall be reported within 24 hours after such independent expenditure is made. Such statement shall be filed with the Clerk, the Secretary, or the Commission and the Secretary of State and shall contain the information required by subsection (b)(6)(B)(iii) of this section indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii) of this section, made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely preelection basis.

TITLE 26: INTERNAL REVENUE CODE

Chapter 95—Presidential Election Campaign Fund

§9002. Definitions

(2) The term "candidate" means with respect to any presidential election, an individual who—

(A) has been nominated for election to the office of President of the United States or the office of Vice President of the United States by a major party, or

(B) has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more States.

For purposes of paragraphs (6) and (7) of this section and purposes of section 9004(a)(2), the term "candidate" means, with respect to any preceding presidential election, an individual who received popular votes for the office of President in such election. The term "candidate" shall not include any individual who has ceased actively to seek election to the office of President of the United States or to the office of Vice President of the United States, in more than one State.

Chapter 96—Presidential Primary Matching Payment Account

§9032. Definitions

(2) The term "candidate" means an individual who seeks nomination for election to be President of the United States. For purposes of this paragraph, an individual shall be considered to seek nomination for election if he—

(A) takes the action necessary under the law of a State to qualify himself for nomination for election,

(B) receives contributions or incurs qualified campaign expenses, or

(C) gives his consent for any other person to receive contributions or to incur qualified campaign expenses on his behalf.

The term "candidate" shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States.

§9033. Eligibility for payments

(a) *Conditions.* To be eligible to receive payments under section 9037, a candidate shall, in writing—

(1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses,

(2) agree to keep and furnish to the Commission any records, books, and other information it may request, and

(3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

(b) *Expense limitation; declaration of intent; minimum contributions.* To be eligible to receive payments under section 9037, a candidate shall certify to the Commission that—

(1) the candidate and his authorized committees will not incur qualified campaign expenses in excess of the limitations on such expenses under section 9035,

(2) the candidate is seeking nomination by a political party for election to the office of President of the United States,

(3) the candidate has received matching contributions which in the aggregate, exceed $5,000 in contributions from residents of each of at least 20 States, and

(4) the aggregate of contributions certified with respect to any person under paragraph (3) does not exceed $250.

(c) *Termination of payments.*

(1) *General rule.* Except as provided by paragraph (2), no payment shall be made to any individual under section 9037—

(A) if such individual ceases to be a candidate as a result of the operation of the last sentence of section 9032(2); or

(B) more than 30 days after the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of votes cast for all candidates of the same party for the same office in such primary election, if such individual permitted or authorized the appearance of his name on the ballot, unless such individual certifies to the Commission that he will not be an active candidate in the primary involved.

(2) *Qualified campaign expenses; payments to Secretary.* Any candidate who is ineligible under paragraph (1) to receive any payments under section 9037 shall be eligible to continue to receive payments under section 9037 to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible under paragraph (1).

(3) *Calculation of voting percentage.* For purposes of paragraph (1)(B), if the primary elections involved are held in more than one State on the same date, a candidate shall be treated as receiving that percentage of the votes on such date which he received in the primary election conducted on such date in which he received the greatest percentage vote.

(4) *Reestablishment of eligibility.*

(A) In any case in which an individual is ineligible to receive payments under section 9037 as a result of the operation of paragraph (1)(A), the Commission may subsequently determine that such individual is a candidate upon a finding that such individual is actively seeking election to the office of President of the United States in more than one State. The Commission shall make such determination without requiring such individual to reestablish

his eligibility to receive payments under subsection (a).

(B) Notwithstanding the provisions of paragraph (1)(b), a candidate whose payments have been terminated under paragraph (1)(b) may again receive payments (including amounts he would have received but for paragraph (1)(b) if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him.

§9034. Entitlement of eligible candidates to payments.

(a) *In general.* Every candidate who is eligible to receive payments under section 9033 is entitled to payments under section 9037 in an amount equal to the amount of each contribution received by such candidate on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such candidate is seeking nomination, or by his authorized committees, disregarding any amount of contributions from any person to the extent that the total of the amounts contributed by such person on or after the beginning of such preceding calendar year exceeds $250. For purposes of this subsection and section 9033(b), the term "contribution" means a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address, but does not include a subscription, loan, advance, or deposit of money, or anything of value or anything described in subparagraph (B), (C), or (D) of section 9032(4).

(b) *Limitations.* The total amount of payments to which a candidate is entitled under subsection (a) shall not exceed 50 percent of the expenditure limitation applicable under section 441a(b)(1)(A) of title 2.

§9038. Examinations and audits; repayments

(a) *Examinations and audits.* After each matching pay-

ment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037.

(b) *Repayments.*

(1) If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

(2) If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended)

it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

(3) Amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

(c) *Notification.* No notification shall be made by the Commission under subsection (b) with respect to a match-

ing payment period more than 3 years after the end of such period.

(d) *Deposit of repayments.* All payments received by the Secretary under subsection (b) shall be deposited by him in the matching payment account.

MICHIGAN COMPILED LAWS

§168.614 List of potential presidential candidates; time of issuance; notification of candidate.

Sec. 614. (1) By 4 p.m. of the first Friday in March in each presidential election year, the secretary of state shall issue a list of the individuals generally advocated by the national news media to be potential presidential candidates for each party's nomination by the political parties for which a presidential primary election will be held pursuant to section 613.

(2) By 4 p.m. of the Tuesday following the first Friday in March in each presidential election year, the state central committee of each political party for which a presidential primary election will be held pursuant to section 613 shall file with the secretary of state a list of individuals whom they consider to be potential presidential candidates for their party.

(3) Forthwith after the issuance of his list and then again after receipt of any names from the various state central committees, the secretary of state shall notify each potential presidential candidate so listed of the provisions of this act relating to the presidential primary election.

§168.615 Printing names of presidential candidates on ballot; affidavit; withdrawal of name; rotation of names; space to vote "uncommitted"; nominating petitions of individuals not listed as candidates.

Sec. 615. (1) The secretary of state shall cause to be printed on the ballots for the presidential primary under the appropriate political party the name of each presidential candidate who has provided the secretary of state with an affidavit indicating his party preference and willingness

to have his name printed on the ballot no later than 4 p.m. of the third Friday in March in each presidential election year. A presidential candidate may withdraw his name from the ballot by notifying the secretary of state no later than 4 p.m. of the third Friday in March in each presidential year. The names of the presidential candidates shall be rotated on the ballot. The ballot shall contain a space for the elector to vote "uncommitted".

(2) An individual who is not listed as a potential presidential candidate in accordance with section 614 shall have his name printed on the ballot and for the purposes of this act, shall be considered in the same manner as all presidential candidates listed, upon presentation to the secretary of state, no later than 4 p.m. of the third Friday in March, nominating petitions for that individual along with an affidavit signed by the individual indicating his party preference and willingness to have his name printed on the ballot. The nominating petitions shall contain the valid signatures of registered qualified electors whose number is at least equal to ½ of 1% of the total vote cast in the state at the previous presidential election for the presidential candidate of the political party of the individual. Signatures shall be obtained starting on January 1 except that in 1972, signatures shall be obtained starting on the effective date of this section. The petitions shall conform to the requirements of this act.

OHIO REVISED CODE ANNOTATED

§3515.011 Recount when winning margin less than one-half per cent of total vote

If the number of votes cast in any county or municipal election for the declared winning nominee, candidate, question, or issue does not exceed the number of votes cast for the declared defeated nominee, candidate, question, or issue by a margin of one-half of one per cent or more of the total vote, and if a recount is requested by those persons authorized to request a recount under section 3515.01 of the Revised Code, the appropriate

board of elections shall order a recount which shall be conducted as provided in sections 3515.04 and 3515.05 of the Revised Code.

If the number of votes cast in any district election for the declared winning nominee, candidate, question, or issue does not exceed the number of votes cast for the declared defeated nominee, candidate, question, or issue by a margin of one-half of one per cent of the total vote, and if a recount if requested by those persons authorized to request a recount under section 3515.01 of the Revised Code, the secretary of state shall order a recount which shall be conducted as provided in sections 3515.04 and 3515.05 of the Revised Code.

If the number of votes cast in any statewide election for the declared winning nominee, candidate, question, or issue does not exceed the number of votes cast for the declared defeated nominee, candidate, question, or issue by a margin of one-half of one per cent of the total vote, and if a recount if requested by those persons authorized to request a recount under section 3515.01 of the Revised Code, the secretary of state shall order a recount which shall be conducted as provided in sections 3515.04 and 3515.05 of the Revised Code.

Appendix E

[logo of the Federal Election Commission]

April 1, 1980

Certified Mail
Return Receipt Requested

Lyndon LaRouche
Box 976, Radio City Station
New York, New York 10019

Dear Mr. LaRouche:

The Commission had determined pursuant to 26 U.S.C. § 9033.4(b) that based on the results of the Democratic Presidential primary elections in New Hampshire on February 26, 1980, and Illinois on March 18, 1980, wherein you received less than 10% of the votes cast for candidates for the Democratic nomination, your date of ineligibility for purposes of the Presidential Primary Matching Payment Account Act (26 U.S.C. § 9031 *et seq.*) is April 17, 1980, in that these two elections were consecutive primary elections as defined by 26 U.S.C. § 9032(7) in which your name appeared on the ballot and for which the Commission received no timely certification by you indicating inactive candidate status with regard to that election. Thus, your principal campaign committee, the Citizens for LaRouche will not receive matching fund payments for qualified campaign expenditures incurred or contracted for after April 17, 1980, unless you reestablish eligibility under the procedures of 26 U.S.C. § 9033(c)(2) and 11 C.F.R. §§ 9034.1(b) and 9034.5.

11 C.F.R. § 9034.5 requires that you submit a statement of net outstanding campaign obligations, if any, as of the close of business on April 17, 1980, within 15 days of your date of ineligibility. Please refer to pages 33-42 of the Financial Control and Compliance Manual for Presiden-

tial Candidates Receiving Public Financing for a detailed discussion concerning the termination of your campaign.

If your campaign has cash and receivables in excess of outstanding debts as of April 17, 1980, no further certifications of matching funds will be made, and the excess will be used to determine the amount repayable to the United States Treasury. The amount of repayment will be determined pursuant to 26 U.S.C. § 9038(b)(3).

If you choose to do so, you have the opportunity to respond to the Commission's determination of your date of ineligibility. Such response setting forth the factual and legal basis of your contentions, must be received by the Commission within ten (10) days of your receipt of this letter. In addition, you may be able to reestablish your eligibility to receive matching funds payments for qualified campaign expenditures incurred after April 17, 1980, if you receive at least 20% of the total number of votes cast for Democratic candidates in a presidential primary election held after March 18, 1980. *See* 26 U.S.C. § 9033(c)(4)(B) and 11 C.F.R. § 9033.7(b).

If you have any questions concerning this matter, please call Marsha Gentner, an attorney in the Office of General Counsel, at (202) 523-4057.

Sincerely,

/s/Robert O. Tiernan
ROBERT O. TIERNAN
Chairman

cc: Felice M. Gelman, Treasurer
Citizens for LaRouche

Appendix F

[Mailgram Service Center
Middletown, VA.]

4-067357S142002 05/21/80 ICS IPMMTZZ CSP NYAB
1 2129773113 MGM TDMT NEW YORK NY 05-21
0521P EST

Citizens For LaRouche
304 West 58 St
New York NY 10019

This mailgram is a confirmation copy of the following message:

2129773113 TDMT NEW YORK NY 360 05-21 0521P
EST
PMS
Max Friedersdorf
Chairman
Federal Election Commission
RPT DLY MGM, LR
1325 K St Northwest
Washington DC 20463

This is to inform you that Citizens for LaRouche believes that Lyndon H. LaRouche, as a result of the Michigan Democratic Primary held May 20, 1980, has reestablished his eligibility for Presidential Primary Campaign Matching Funds. Unofficial returns obtained from the office secretary of State Division of Elections show that 69,278 votes were casted in the Democratic Primary, of those, 35,757 were casted in the uncommitted column therefore 33,521 were casted for named candidates. Of these Mr. LaRouche received 8,793. Therefore, Mr. LaRouche received 26.2 percent "of the total number of votes casted for candidates of the same party in a primary election. . . " As stated in Section 9033 of the Federal

Election Campaign Act under reestablishment of eligibility, Mr. LaRouche received more than 20 percent of that vote, reestablishing his eligibility. Further, Citizens for LaRouche believes that the 22,904 votes casted for candidate Gerry Brown also should not be included in calculating reeligibility. Governor Brown is no longer a candidate under the Federal Election Campaign Act, Section 9022(2) "The term 'candidate' shall not include any individual who is not actively conducting campaigns in more than 1 state in connection with seeking nomination for election to the President of the United States." Governor Brown is not actively conducting a campaign in any state. In that case, Mr. LaRouche received 8,793 votes of a total for 82.8 percent of the total votes casted for all candidates.

In consideration of the above, believing that the official certification of the election will be available from the Michigan State Board of Canvassers by the beginning of next week, we request that the Commission pass on its agenda for the May 29 meeting of the Federal Election Commission the reestablishment of Mr. LaRouche's matching funds eligibility. Further, we request that in your consideration of the planned post-primary audit of the Citizens for LaRouche, scheduled for consideration on your May 22 agenda, that you take the reestablishment of Mr. LaRouche's eligibility into consideration, in addition to the other matters I have raised in previous correspondence, and postpone any audit until a decision has been reached on eligibility.

/s/Felice Gelman

FELICE GELMAN
Citizens for LaRouche
304 West 58 St
New York NY 10019

17:21EST
MGMCOMP MGM

[Mailgram Service Center
Middletown, Va.]

4-065842S148002 05/27/80 UCS IPMMTZZ CSP NYAB
1 2129773113 MGMTDMT NEW YORK NY 05-27
0417P EST

Felice M. Gelman Treasurer
Citizens for LaRouche
304 West 58th St 5th Floor
New York NY 10019

This mailgram is a confirmation copy of the following message:

2129773113 NL TDMT NEW YORK NY 594 05-27
0417P EST
PMS
Max Friedersdorf
Chairman
Federal Election Commission
RPT DLY MGM, DLR
1325 K St
Washington DC

I have learned that the Michigan Board of Canvassers will not certify the results of the Michigan Presidential Preference Primary until June 2. Citizens for LaRouche had requested that the Federal Election Commission place the recertification of the matching funds eligibility of Lyndon H. LaRouche, Jr. on its agenda for May 29. In view of the fact that official certification of the results of the election will not be available until after that meeting Citizens for LaRouche hereby request the Commission consider at its May 29 meeting a resolution which would recertify Mr. LaRouche's matching funds eligibility pending submission to the General Counsel's office the official certified results of the Michigan Primary Election. I am

making this request because should the Commission not consider recertification until the final official results of the Michigan Primary are available Citizens for LaRouche will be delayed by 2 weeks in making a matching funds submission. This delay may substantially affect Mr. LaRouche's ability to campaign in the final June 3 round of Presidential Primaries by denying him Federal funds. Therefore, I request that Commission proceed with a resolution of recertification pending submission of the official results. We do not expect any significant departure from the unofficial results made available to us from the Office of the Michigan Secretary of State; Uncommitted-35,757, Brown-22,904, LaRouche-8,783, Write-ins-1,824. Section 9033 of the Federal Election Campaign Act specifies that a candidate will re-establish his eligibility by winning 20 percent "of the total votes cast for candidates of the same party in a Primary election." 33,521 votes were cast for Democratic candidates in the Michigan Primary election. Of those Mr. LaRouche won 26.2 percent. Citizens for LaRouche believe also that Jerry Brown no longer qualifies under Section 9022 (2) of the FECA as a candidate since he is not actively campaigning in more than one state. If Mr. Brown's votes are not counted among those votes cast for candidates Mr. LaRouche won 82.8 percent of the vote. Thank you for your consideration. I would also like to request that the Commission consider as an agenda item the request Citizens for LaRouche made to Robert Costa of the Audit Division for a report of the findings of the threshold audit before commencing a post primary audit. Citizens for LaRouche requested the Audit Division make its findings available so that the Committee could implement its suggestions for the remainder of the campaign. Five weeks have passed since the audit was completed and not one suggestion has been received from the Audit Division. This is particularly disturbing because the Audit team in its exit conference raised several questions concerning our financial practices which they and we agreed reflect unresolved Commission policies. Without resolution on those issues we are unable

to alter our financial and record keeping practices to insure compliance in all respects with the Act. Obviously that is a situation we would like to avoid. Therefore we request that the Commissioners themselves take up consideration of the matter and postpone any further audit until report resolving outstanding matters has been issued.

Further, if, as I believe is the case, Mr. LaRouche has requalified for Matching Funds eligibility, I believe that a second audit—commencing as it does in the midst of our campaign and requiring the commitment of significant campaign resources for its successful completion—is premature. For this reason, I also request the Commission consider postponing the second audit at least until the question of recertification of Mr. LaRouche has been resolved.

Sincerely,

/s/Felice Gelman

FELICE M. GELMAN
Treasurer
Citizens for LaRouche
304 West 58 St
5th Floor
New York NY 10019

16:17 EST
MGMCOMP MGM

Appendix G

[logo of the Michigan Secretary of State]

June 9, 1980

TO WHOM IT MAY CONCERN:

The attached is a true copy of the results of the Presidential Primary held in the State of Michigan on May 20, 1980 as certified by the Board of State Canvassers on June 2, 1980, to the Secretary of State.

/s/George H. Herstek, Jr.
GEORGE H. HERSTEK, JR.
Director, Elections Division
Michigan Department of State

Subscribed and Sworn
before me on
June 9, 1980

/s/Sandra Sperry
Notary Public

SANDRA SPERRY
Notary Public, Clinton Co., Mich.
My Comm. Expires March 13, 1984
Acting in Ingham Co.

[OFFICIAL]
POLL BOOK
1980 Primary Election

Counties					
Alcona	1016	Gratiot	2419	Missaukee	838
Alger	719	Hillsdale	3093	Monroe	10346
Allegan	5055	Houghton	2238	Montcalm	2866
Alpena	2140	Huron	3140	Montmorency	1524
Antrim	2199	Ingham	21074	Muskegon	8886
Arenoc	1122	Ionia	2898	Newaygo	2521
Baraga	560	Iosco	2087	Oakland	93297
Barry	2321	Iron	1162	Oceana	1680
Bay	1606	Isabella	3838	Ogemaw	1275
Benzle	1170	Jackson	8948	Ontonagon	956
Berrien	9516	Kalamazoo	10471	Osceola	1496
Branch	2148	Kalkaska	888	Oscoda	709
Calhoun	7001	Kent	29070	Otsego	1114
Cass	2489	Keweenaw	326	Ottawa	12801
Charlevale	11394	Lake	811	Presque Isle	1311
Cheboygan	1808	Lapeer	4306	Roscommon	1878
Chippewa	273	Leelanau	2073	Saginaw	11801
Clara	1819	Lenawee	5513	St. Clair	11797
Clinton	6045	Livingston	7516	St. Joseph	2372
Crawford	713	Luce	467	Sanilac	4343
Delta	1695	Mackinac	1296	Schoolcraft	456
Dickinson	1669	Macomb	51462	Shlawassee	5386
Eaton	6938	Manicine	1581	Tuscola	3306
Emmet	1843	Marquette	7137	Van Buren	4231
Genessee	57886	Mason	2145	Washtenaw	19422
Gladwin	1558	Mecosia	1789	Wayne	174366
Gogebic	1596	Menominee	1673	Wexford	2755
Gd. Traverse	3477	Midland	11501	TOTALS	707357

[true copy /s/ George H. Herstek, Jr.]

PRESIDENTIAL PRIMARY ELECTION—MAY 20, 1980

Counties	Edmund Brown Jr. DEM	Lyndon LaRouche Jr. DEM	Uncommitted DEM	Scattering DEM	TOTAL
Alcona	31	26	41	3	101
Alger	40	10	69	31	150
Allegan	116	62	110	4	292
Alpena	82	35	52	15	184
Antrim	68	28	85	30	211
Arenac	23	14	39	12	93
Baraga	27	13	20	9	69
Barry	56	26	60	7	149
Bay	267	122	265	93	747
Benzie	26	13	42	28	107
Berrlan	494	223	468	62	1247
Branch	44	23	77	17	161
Calhoun	239	131	203	23	596
Cass	133	61	142	38	374
Charlevoix	28	14	46	13	101
Cheboygan	68	37	99	33	239
Chippewa	97	28	108	40	273
Clare	52	16	70	8	146
Clinton	210	53	287	21	571
Crawford	23	2	24	0	49
Delta	78	31	62	23	214
Dickinson	86	49	81	32	218
Eaton	136	53	182	52	423
Emmet	29	16	75	2	122
Genesee	2551	834	4705	74	8364
Gladwin	57	28	79	31	197
Gogebic	170	49	148	48	415
Grand Trav.	76	21	44	13	154
Gratiot	40	12	41	36	129
Hillsdale	78	20	63	16	177
Houghton	95	31	77	17	220
Huron	108	46	68	0	222
Ingham	325	94	570	66	1055
Ionia	93	44	54	14	205
Iosca	58	23	72	55	208
Iron	60	31	103	46	240
Isabella	83	34	141	10	268
Jackson	236	80	202	41	559
Kalamazoo	263	91	207	52	613
Kalkaska	31	10	36	40	117
Kent	439	166	804	61	1470
Keweenaw	12	1	12	17	42

John Anderson REP	George Bush REP	Benjamin Fernandez REP	Ronald Reagan REP	Harold Stassen REP	Uncommitted REP	Scattering REP	TOTAL
72	475	7	336	7	17	1	915
65	263	0	188	1	15	1	533
374	2168	11	2035	24	66	5	4683
167	1164	6	502	11	31	0	1881
203	1004	7	591	16	58	1	1860
47	525	1	382	4	22	1	987
37	265	2	166	2	6	0	478
176	1121	11	714	13	35	1	2071
444	3488	40	1755	34	94	4	5857
100	506	2	328	1	20	1	958
777	3173	57	4032	36	193	1	8269
185	847	10	818	2	49	2	1913
630	3774	16	1881	20	83	1	6405
212	794	6	983	11	28	0	2034
164	693	6	382	6	42	0	1293
149	749	6	500	13	33	0	1450
137	1054	3	616	8	22	6	1842
124	755	11	631	2	39	0	1562
415	3022	28	1737	31	145	2	5380
42	357	0	216	1	11	0	627
101	888	5	465	11	11	0	1481
101	752	13	476	6	10	2	1360
562	3694	52	1750	24	123	5	6210
180	931	2	464	2	40	2	1621
3451	23978	146	12813	101	951	13	41455
76	723	3	519	12	26	2	1361
98	356	12	511	4	25	0	1006
286	2050	12	940	11	23	1	3323
193	1170	50	737	22	51	3	2228
168	1290	9	1157	15	58	4	2701
160	1260	11	505	3	29	1	1969
213	1533	26	1113	14	39	0	2938
2608	12038	70	4442	46	274	16	19494
231	1567	9	783	14	28	5	2637
108	928	6	703	3	35	2	1785
87	440	3	319	1	20	1	871
343	1655	18	1212	14	60	2	3304
488	5177	27	2578	24	87	6	8389
1183	5162	74	2858	57	100	6	9440
50	345	4	304	4	15	1	723
2882	16222	64	6668	70	414	8	26328
15	157	1	86	2	4	0	265

PRESIDENTIAL PRIMARY ELECTION—MAY 20, 1980

Counties	Edmund Brown Jr. DEM	Lyndon LaPouche Jr. DEM	Uncommitted DEM	Scattering DEM	TOTAL
Lake	35	19	63	14	131
Lapeer	82	35	117	4	238
Leelanau	77	16	49	15	157
Lenawee	195	68	138	6	407
Livingston	123	67	170	30	390
Luce	14	5	12	10	41
Mackinac	44	14	60	27	145
Macomb	1843	820	2430	389	5482
Manistee	63	21	71	25	180
Marquette	353	113	446	53	965
Mason	56	19	107	9	191
Mecosia	46	35	24	9	114
Menominee	101	40	100	56	297
Midland	277	108	745	31	1161
Missaukee	14	5	30	3	52
Monroe	458	183	475	59	1175
Montcalm	118	49	65	6	238
Montmorency	65	24	90	0	179
Muskegon	378	120	367	28	893
Newaygo	61	60	86	45	252
Oakland	1676	601	2726	539	5542
Oceana	48	28	46	12	134
Ogemow	59	19	77	38	193
Ontonagon	68	18	64	37	187
Osceola	48	14	53	10	125
Oscoda	35	19	24	1	79
Otsego	43	16	35	0	94
Ottawa	240	106	191	30	567
Presque Isle	87	15	113	12	227
Roscommon	69	29	73	12	183
Saginaw	244	134	428	97	903
St. Clair	271	121	373	46	811
St. Joseph	66	20	75	23	184
Sanilac	83	37	84	28	232
Schoolcraft	30	10	17	18	77
Shlawassee	226	85	161	26	498
Tuscola	81	44	101	13	240
Van Buren	130	63	123	33	349
Washtenaw	283	111	344	95	833
Wayne	7497	2908	15126	6895	32126
Wexford	100	26	171	31	328
TOTALS	23043	8948	36385	10048	78424

John Anderson REP	George Bush REP	Benjamin Fernandez REP	Ronald Reagan REP	Harold Stassen REP	Uncommitted REP	Scattering REP	TOTAL
54	329	1	220	3	21	0	628
209	2270	11	1293	4	59	2	3848
211	1100	11	567	6	19	2	1916
352	2764	22	1747	30	60	0	4975
447	3766	31	2248	14	64	5	6825
53	216	0	130	4	7	0	410
95	534	3	346	6	29	2	1015
2957	25080	85	15353	123	537	56	44171
148	718	12	485	10	27	1	1401
563	3117	16	1407	25	82	4	5214
172	930	8	708	2	36	4	1860
136	401	7	558	5	10	0	1617
115	562	10	623	14	20	1	1345
1124	5969	84	2797	31	327	8	10340
63	384	1	304	4	30	0	786
668	3908	28	2602	31	122	5	7364
225	1372	18	809	23	40	2	2487
119	601	7	460	2	35	0	1224
686	4194	39	2943	36	97	4	7773
171	1159	13	804	9	43	1	2200
6464	54564	284	24970	241	1175	57	87755
138	728	5	526	6	16	1	1420
74	563	7	367	5	31	3	1050
72	305	7	322	6	8	1	721
121	727	7	469	5	35	7	1371
38	269	2	367	2	7	1	586
76	555	9	306	9	23	0	978
857	6560	33	4135	25	116	5	11731
82	500	2	358	4	31	1	978
126	827	6	646	5	30	0	1640
729	6214	89	3167	18	159	8	10384
646	5743	48	3496	29	179	3	10144
198	914	10	913	9	72	1	2117
0	2084	11	1692	4	238	4	4033
33	197	1	140	1	6	1	377
370	2691	32	1441	17	58	2	4611
210	1665	15	1084	14	38	2	3028
290	1495	20	1355	31	72	8	3269
2043	11969	41	3815	33	128	7	18038
9508	73701	354	42347	381	2698	278	129267
226	1142	6	716	8	66	2	2166
48947	341998	2248	189184	1938	10265	596	595176

PRESIDENTIAL PRIMARY ELECTION — MAY 20, 1980

Counties	Edmund Brown Jr. DEM	Lyndon LaRouche Jr. DEM	Uncommitted DEM	Scattering DEM	TOTAL
1st					
Wayne	1565	548	3437	1965	1515
TOTAL	1565	548	3437	1965	1515
2nd					
Monroe	437	177	459	58	1131
Washtenaw	256	95	308	93	752
Wayne	153	55	269	39	516
TOTAL	846	327	1036	190	2399
3rd					
Barry	42	25	52	7	126
Calhoun	235	126	197	23	581
Clinton	74	16	124	19	233
Eaton	128	53	178	48	407
Hillsdale	4	2	2	0	8
Ionia	0	0	0	3	3
Jackson	4	7	5	0	16
Kalamazoo	263	91	207	52	613
Kent	0	1	0	0	1
St. Joseph	1	0	0	0	1
TOTAL	751	321	765	152	1989
4th					
Berrian	494	223	468	62	1247
Branch	44	23	77	17	161
Calhoun	4	5	6	0	15
Cass	133	61	142	38	374
Hillsdale	74	18	61	16	169
Lenawee	195	68	138	6	407
St. Joseph	65	20	75	23	183
Van Buren	130	63	123	33	349
TOTAL	1139	481	1090	195	2905
5th					
Barry	14	1	8	0	23
Clinton	8	0	3	0	11
Eaton	8	0	4	4	16
Ionia	93	44	54	11	202
Kent	439	165	804	61	1469
Montcalm	4	5	2	0	11
TOTAL	566	215	875	76	1732

John Anderson REP	George Bush REP	Benjamin Fernandez REP	Ronald Reagan REP	Harold Stassen REP	Uncommitted REP	Scattering REP	TOTAL
823	4297	53	1733	51	340	17	7314
823	4297	53	1733	51	340	17	7314
626	3687	28	2456	31	118	5	6951
1863	10269	30	3083	26	104	8	15383
939	8951	33	4403	27	155	12	14520
3428	22907	91	9942	84	377	25	36854
150	942	11	623	6	30	1	1703
621	3717	15	1839	18	80	1	6281
147	1078	4	505	8	77	2	1821
557	3622	52	1709	20	121	5	6086
6	86	0	56	1	1	0	150
3	37	0	22	0	2	3	67
15	182	0	123	0	12	0	332
1183	5162	74	2858	57	100	6	9490
6	45	0	22	0	1	0	74
1	21	0	24	0	1	0	47
2689	14892	156	7771	110	425	18	26061
777	3173	57	4032	36	193	1	8269
185	847	10	818	2	49	2	1913
9	57	1	52	2	3	0	124
212	794	6	983	11	28	0	2034
162	1204	9	1101	14	57	4	2557
352	2764	22	1747	30	60	0	4975
197	893	10	889	9	71	1	2070
290	1493	20	1355	31	72	8	3269
2184	11225	135	10977	135	533	16	25205
26	179	6	91	7	5	0	308
15	156	11	158	1	4	0	345
5	72	0	41	4	2	0	124
228	1530	9	764	14	26	2	2570
2876	16177	64	6646	70	413	8	26254
11	138	3	89	5	4	0	249
3161	18252	86	7786	101	454	10	29850

PRESIDENTIAL PRIMARY ELECTION—MAY 20, 1980

Counties	Edmund Brown Jr. DEM	Lyndon LaRouche Jr. DEM	Uncommitted DEM	Scattering DEM	TOTAL
6th					
Clinton	24	7	41	1	73
Ingham	321	93	564	66	1044
Jackson	232	73	197	41	543
Livingston	78	45	102	16	241
Washtenaw	27	16	36	2	81
TOTAL	682	234	940	126	1982
7th					
Genesee	2551	834	4905	74	8364
Saginaw	25	16	27	18	86
Shiawassee	19	8	14	5	48
Tuscola	2	3	13	0	18
TOTAL	2597	261	4959	97	8514
8th					
Arenac	5	2	6	2	15
Bay	261	111	263	84	719
Huron	108	46	68	6	222
Lapeer	82	35	117	4	238
Saginaw	190	92	351	77	710
8th cont.					
Sanilac	69	27	69	27	192
Tuscola	80	41	88	13	222
TOTAL	795	354	962	207	2318
9th					
Allegan	116	62	110	4	292
Benzie	4	3	0	4	11
Lake	35	19	63	14	131
Leelanau	77	16	49	15	157
Manistee	63	21	71	25	180
Mason	56	19	107	9	191
Muskegon	378	120	367	28	893
Newaygo	61	60	86	45	252
Oceana	48	28	46	12	134
Ottawa	240	106	191	30	567
Wexford	1	1	5	0	7
TOTAL	1079	455	1095	186	2815

John Anderson REP	George Bush REP	Benjamin Fernandez REP	Ronald Reagan REP	Harold Stassen REP	Uncommitted REP	Scattering REP	TOTAL
30	200	3	118	3	6	0	360
2585	11830	70	4355	46	268	16	19170
473	4995	27	2455	24	77	6	8057
261	2448	13	1424	8	44	4	4202
180	1700	11	732	7	24	1	2655
3529	21173	124	9084	88	419	27	34444
3451	23978	146	12813	101	951	15	41455
33	377	5	185	1	10	0	611
14	251	10	153	7	10	0	445
8	80	1	39	0	4	0	132
3506	24686	162	13190	109	975	15	42643
7	150	0	94	2	7	0	260
438	3409	40	1709	32	90	4	5722
213	1533	26	1113	14	39	0	2938
209	2270	11	1293	4	59	2	3848
625	5253	80	2591	10	127	8	8696
0	1868	11	1476	3	219	2	3579
202	1585	14	1045	14	34	2	2896
1694	16068	182	9321	79	577	18	27939
374	2168	11	2035	24	66	5	4683
6	9	0	12	0	0	0	27
54	329	1	220	3	21	0	628
211	1100	11	567	6	19	2	1916
148	718	12	485	10	27	1	1401
172	930	8	708	2	36	4	1856
680	4194	39	2943	36	97	4	7993
171	1159	13	804	9	43	1	2200
138	728	5	526	6	16	1	1420
857	6560	33	4135	25	116	5	11731
5	81	0	54	0	4	0	144
2816	17976	133	12489	121	445	23	34003

PRESIDENTIAL PRIMARY ELECTION—MAY 20, 1980

Counties	Edmund Brown Jr. DEM	Lyndon LaRouche Jr. DEM	Uncommitted DEM	Scattering DEM	TOTAL
10th					
Antrim	35	1	29	0	65
Arenac	23	12	33	10	78
Bay	6	11	2	9	28
Benzie	22	10	42	24	98
Clare	52	16	70	8	146
Clinton	104	30	119	1	254
Crawford	1	0	1	0	2
Gladwin	59	28	79	31	197
Grand Trav.	76	21	44	13	154
Gratiot	40	12	41	36	129
Ingham	4	1	6	0	11
Isabella	83	34	141	10	268
Kalkaska	31	10	36	40	117
Mecosta	46	35	24	9	114
Midland	277	108	745	31	1161
Missaukee	14	5	36	3	52
Montcalm	114	44	63	6	227
Ogemaw	59	19	77	38	193
Osceola	48	14	53	10	125
Roscommon	69	29	73	12	183
Saginaw	29	26	50	2	107
Shlawassee	207	77	147	21	452
Wexford	99	25	166	31	321
TOTAL	1498	568	2071	345	4482

John Anderson REP	George Bush REP	Benjamin Fernandez REP	Ronald Reagan REP	Harold Stassen REP	Uncommitted REP	Scattering REP	TOTAL
47	195	2	111	8	7	0	370
40	375	6	288	2	15	1	727
6	79	0	46	2	4	0	137
94	497	2	316	1	20	1	931
124	755	11	631	2	39	0	1562
223	1588	10	956	19	58	0	2854
4	27	0	10	0	1	0	42
76	723	3	517	12	26	2	1361
286	2050	12	940	11	23	1	3323
193	1170	50	739	22	51	3	2228
23	208	0	87	0	6	0	324
343	1655	18	1212	14	60	2	3304
50	345	4	304	4	15	1	723
136	901	7	558	5	10	0	1617
1124	5969	84	2797	31	327	8	10340
63	384	1	304	4	30	0	786
214	1234	16	720	18	36	2	2240
74	563	7	367	5	31	3	1050
121	727	7	469	5	35	7	1371
126	827	6	646	5	30	0	1640
71	584	4	391	7	20	0	1077
356	2440	22	1288	10	48	2	4166
221	1061	6	662	8	62	2	2022
4015	24357	278	14361	195	954	35	44195

PRESIDENTIAL PRIMARY ELECTION—MAY 20, 1980

Counties	Edmund Brown Jr. DEM	Lyndon LaRouche Jr. DEM	Uncommitted DEM	Scattering DEM	TOTAL
11th					
Alcona	31	26	41	3	101
Alger	40	10	69	31	150
Alpena	82	35	52	15	184
Antrim	33	27	56	30	146
Baraga	27	13	20	9	69
Charlevoix	28	14	46	13	101
Cheboygan	68	39	99	33	239
Chippewa	97	28	108	40	273
Crawford	22	2	23	0	47
Delta	98	31	62	23	214
Dickinson	86	49	81	32	248
Emmet	29	16	75	2	122
Gogebic	170	49	148	48	415
Houghton	95	31	77	17	220
Iosco	58	23	72	55	208
Iron	60	31	103	46	240
Keweenaw	12	1	12	17	42
Luce	14	5	12	10	41
Mackinac	44	14	60	27	145
Marquette	353	113	446	53	965
Menominee	101	40	100	56	297
Montmorency	65	24	90	0	179
Ontonagon	68	18	64	37	187
Oscoda	35	19	24	1	79
Otsego	43	16	35	0	94
Presque Isle	87	15	113	12	227
Schoolcraft	30	10	19	18	77
TOTAL	1876	699	2107	628	5310
12th					
Macomb	946		1164	209	2716
Oakland	51	16	126	2	195
St. Clair	271	121	373	46	811
Sanilac	14	10	15	1	40
TOTAL	1282	544	1678	258	3762

John Anderson REP	George Bush REP	Benjamin Fernandez REP	Ronald Reagan REP	Harold Stassen REP	Uncommitted REP	Scattering REP	TOTAL
72	475	7	336	7	17	1	915
65	263	0	188	1	15	1	533
167	1164	6	502	11	31	0	1881
156	809	5	480	8	31	1	1490
37	265	2	166	2	6	0	478
164	693	6	382	6	42	0	1293
149	749	6	500	13	33	0	1450
137	1054	3	616	8	22	2	1842
38	330	0	206	1	10	0	585
101	888	5	465	11	11	0	1481
101	752	13	476	6	10	2	1360
180	931	2	464	2	40	2	1621
98	356	12	511	4	25	0	1006
160	1260	11	505	3	29	1	1967
108	928	6	703	3	35	2	1785
87	440	3	319	1	20	1	871
15	157	1	86	2	4	0	265
53	216	0	130	4	7	0	410
95	534	3	346	6	27	2	1015
563	3117	16	1407	25	82	4	5214
115	562	10	623	14	20	1	1345
119	601	7	460	2	35	0	1224
72	305	7	322	6	8	1	721
38	269	2	267	2	7	1	586
76	555	9	306	9	23	0	978
82	500	2	358	4	31	1	978
33	197	1	140	1	6	1	379
3081	18370	145	11264	162	629	24	33675
1643	13986	54	8238	83	295	11	24310
277	1952	6	995	11	55	2	3298
646	5743	48	3496	29	179	3	10144
0	216	0	216	1	19	2	454
2566	21897	108	12945	124	548	18	38206

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Counties	Edmund Brown Jr. DEM	Lyndon LaRouche Jr. DEM	Uncommitted DEM	Scattering DEM	TOTAL
13th					
Wayne	1266	453	2017	1750	5486
TOTAL	1266	453	2017	1750	5486
14th					
Macomb	487	255	552	96	1390
Wayne	872	448	1940	1092	4352
TOTAL	1359	703	2492	1188	5742
15th					
Monroe	21	6	16	1	44
Wayne	1198	397	2267	581	4443
TOTAL	1219	403	2283	582	4487
16th					
Wayne	1439	591	2793	743	5566
TOTAL	1439	591	2793	743	5566
17th					
Oakland	218	75	603	220	1116
Wayne	1004	416	2403	725	4548
TOTAL	1222	491	3006	945	5664
18th					
Macomb	410	168	714	84	1376
Oakland	546	229	720	140	1635
TOTAL	956	397	1434	224	3011
19th					
Livingston	45	22	68	14	149
Oakland	861	281	1277	177	2596
TOTAL	906	303	1345	191	2745
TOTALS	23043	8948	36385	10048	78424

John Anderson REP	George Bush REP	Benjamin Fernandez REP	Ronald Reagan REP	Harold Stassen REP	Uncommitted REP	Scattering REP	TOTAL
527	2955	48	1464	29	194	9	5226
527	2955	48	1464	29	194	9	5226
475	3996	11	2612	17	81	24	7216
1638	15367	43	9065	57	445	170	26785
2113	19363	54	11677	74	526	194	34061
42	221	0	146	0	4	0	413
1850	14551	49	8724	73	471	15	25733
1892	14772	49	8870	73	475	15	26146
2154	16048	65	9688	87	526	26	28594
2154	16048	65	9688	87	526	26	28594
1290	9242	23	4455	35	261	6	15310
1577	11532	63	7270	57	567	29	21095
2867	20774	86	11723	92	828	35	36405
819	7098	20	4503	23	161	21	12645
1717	14636	136	6324	89	278	26	23206
2536	21734	156	10827	112	439	47	35851
186	1518	18	874	6	20	1	2623
3180	28734	119	13198	106	581	23	45941
3366	30252	137	14072	112	601	24	48564
48747	341998	2248	189184	1938	10265	596	595176

Appendix H

OFFICIAL BALLOT

[No 7978]
PRESIDENTIAL
PRIMARY ELECTION
Proof Ballot—Benzie County, Michigan

TUESDAY, MAY 20, 1980

NOTE! There are 2 PARTY TICKETS on This Ballot
1. Select the Party of Your Choice
2. Vote ONLY for the Candidates on THAT Party Ticket

YOU CANNOT SPLIT YOUR TICKET—If YOU Vote for Candidates on More Than 1 Party Ticket—YOUR BALLOT WILL BE REJECTED

INSTRUCTIONS: Make a cross (X) in the square to the left of not more than the number of names for each office as may be indicated under the title of that office.

For the Office of President You May Vote for the Candidate of Your Choice or You May Vote "Uncommitted."

If you desire to vote for a person whose name is not printed on the ballot, write or place the name of that person in the blank space provided and place a cross (X) in the square to the left of the name.

Before leaving the booth, fold the ballot so that the face of the ballot is not exposed and so that the numbered corner is visible.

VOTE ONLY ONE PARTY

[symbol of the Democratic Party] **Democratic Party**	[symbol of the Republican Party] **Republican Party**
President of the United States Vote For Not More Than One	President of the United States Vote For Not More Than One
☐ Edmund G. Brown, Jr.	☐ Harold Stassen
☐ Lyndon H. LaRouche, Jr.	☐ John B. Anderson
☐ Uncommitted	☐ George Bush
☐	☐ Benjamin Fernandez
	☐ Ronald Reagan
	☐ Uncommitted
	☐
Democratic Delegates to County Convention	**Republican Delegates to County Convention** Vote For Not More Than One
Will Be Elected At August 5, 1980 Primary Elections	☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Printed by Authority of the County Election Commission.

DO NOT SPLIT YOUR TICKET

Appendix I

[logo of the Federal Election Commission]

PARTIAL TRANSCRIPT OF THE PROCEEDINGS
OF THE
FEDERAL ELECTION COMMISSION
REGULAR MEETING
THURSDAY, MAY 29, 1980

PRESENT: Max L. Friedersdorf, Chairman, presiding
John W. McGarry, Vice Chairman
Joan D. Aikens, Commissioner
Thomas E. Harris, Commissioner
Frank P. Reiche, Commissioner
Special Deputy to the Secretary of the Senate,
Harriet Robnett, representing
Edmund L. Kenshaw
Commissioner Ex Officio
Orlando B. Potter, Staff Director
(a.m. session)
William P. Loughrey, Deputy Staff Director,
representing Orlando B. Potter
(p.m. session)
Charles N. Steele, General Counsel
Marjorie W. Emmons, Secretary
to the Commission
(Executive Session)
Lena L. Stafford, Recording Secretary
(Open Session)

PARTIAL TRANSCRIPT, OPEN MEETING OF THE FEDERAL ELECTION COMMISSION MAY 29, 1980 A.M. SESSION

DISCUSSION OF AGENDA DOCUMENT #80-189, "Lyndon LaRouche Request for Reestablishment of Eligibility"

GENERAL COUNSEL CHARLES N. STEELE: I would ask

Bob Bogin who has worked on this to present our memorandum.

BOB BOGIN: In a telegram from Citizens for LaRouche Committee, it was requested that the Commission consider whether or not Lyndon LaRouche has reestablished his eligibility based on the Michigan contest of May 20th, 1980, wherein he received 8,793 votes. In New Hampshire and Illinois, Mr. LaRouche received less than 10% of the vote. The Commission, based on the 10% rule of 9033, determined that April 17th would be the date of ineligibility. In order to reestablish his date of eligibility, Mr. LaRouche needed to receive 20% or more cf the vcte in a subsequent primary. The statute reads if a candidate receives 20% or more of the total number of votes cast for candidates of the same party in the primary election that he can reestablish his eligibility. This statute was . . . this enactment, this provision, was a 1976 amendment to the Primary Marching Fund Act, amending the 1974 statute. In the legislative history it was, there were many references to the purposes behind the 10 and 20% rule. The purpose of the rule was to terminate payments to those candidates who did not show serious support for his candidacy. And in order to reestablish that seriousness to be able to demonstrate that he was subsequently a serious candidate, he would have to receive 20% of the vote. Senator Taft talks often of 20% of the vote. We, the General Counsel's office, interpret 26 U.S. §9033(c) (4) (B) to be a statement by Congress that 20% of the vote is those votes cast for all in the Democratic primary or in the Republican primary in the party's primary. I should give you some background about the Michigan primary. The Michigan primary was set by State statute. In December 1979, the Democratic Michigan party decided not to participate in the Michigan primary because of a conflict with the Democratic National Committee Rules. Michigan had crossover voting. Based on this conflict they, the Democratic party, decided to have a caucus preceding this May 20th contest. The party also requested that the candidates likely to appear on the ballot May 20th withdraw. And President Carter

and Senator Kennedy did so. The resulting, result, left Mr. LaRouche, Governor Brown, and a ballot marked uncommitted on the ballot. In a District Court case brought by one of the State Senators in Michigan, to rule that the Democratic Party of Michigan had to participate in the primary, or in the alternative to have the Secretary of State of Michigan enforce the Michigan statute which required him to set rules and requirements about how the vote on May 20th election was to be allocated in terms of delegate selection, the District Court ruled that because of the conflict between the DNC rules prohibiting crossover voting that as applied to the Democratic party, the Michigan statute was unconstitutional. Mr. LaRouche received, as I said, 8,793 votes.

MR. STEELE: These are still unofficial results. We have not yet received the official results.

MR. BOGIN: Right. The official results will be out June 2nd, we were led to believe. It is the position of the General Counsel's office that when figuring the 20% rule, the percentage, you take all the votes cast in the Democratic primary, and use that as the denominator, and those votes that any candidate gets as the numerator, and whatever that percentage is, is what he received in the primary. This finds ample support in the legislative history, and its the interpretation the Commission has made in terms of figuring out percentages for the 10% rule in New Hampshire and other States. There is also a possibility that the contest in Michigan isn't even a primary under the definition, under the Primary Matching Act of Chapter 96. But we believe that just on the grounds alone that he didn't receive 20% of the vote, that that is sufficient reason to, and can stand by itself alone, as a reason for refusing or denying the reestablishment of eligibility.

MR. STEELE: In effect, in my mind, it comes down to the question of whether in the provision, within the 20% provision, whether you treat votes for such lines as are specifically put by the State on the ballot in Michigan and treated as a place to vote, such as uncommitted or write-in votes or someone like Governor Brown who though no

longer technically a candidate for purposes of obtaining matching funds, is nonetheless a candidate on the ballot. So that the question is really whether you count the 20% as 20% of the votes cast for people who under the matching funds system are eligible. It seems to us, as Bob has set forth, that the proper reading of the statute which is strongly buttressed by the legislative history, is that you are talking about 20% of the votes cast in that particular election, that particular election in this case being the Democratic primary. Accordingly, there is a, there are two recommendations because the request was not only that the Commission determine reeligibility, but that because of that, that the audit be postponed. I am not entirely sure even if the Commission were to take the opposite view, that there would be any necessity for postponing the audit. But our two recommendations are that there is nothing that Mr. LaRouche has shown in his telegram of May 21st that reestablishes his eligibility, and that accordingly, as I say, I'm not sure even if you took the opposite view, whether you would need to reschedule the audit. But that under those circumstances, there would certainly be no reason to reschedule the audit, and you should proceed with the audit as scheduled. As I say, it would seem to me that given the guidelines for the audit, that the audit could proceed even if you were to make the opposite determination. So if you were to reject recommendation one, that would not necessarily mean that you should reject recommendation two.

CHAIRMAN FRIEDERSDORF: Commissioner Harris.

COMMISSIONER HARRIS: Isn't this submitted late?

MR. STEELE: I guess it is, I've never been quite sure, I mean we got it, the telegram came in, we received it late Thursday. At the direction of the Chairman's office, we prepared this memorandum for this meeting. We could not get it done before midday Friday. But I don't know what it means in terms of Commission rules. Is it being submitted late when there is a specific direction to try and get it to this agenda? It's not so stamped. I don't know what, . . . I'm not quite clear on that.

COMMISSIONER HARRIS: It was submitted late, so it might require a motion for a late submission. The stamp on mine would indicate it was circulated late yesterday afternoon . . . received by the Secretary yesterday afternoon. I think it was submitted late and might require a motion.

MR. STEELE: That's correct, as I say, I just didn't again . . .

COMMISSIONER HARRIS: I'm not raising a point for the purpose of reproaching you, but for the purpose of inquiring whether it does not require . . .

MR. STEELE: My concern was that it seems to me, I've never been quite clear on the Commission's rules where for some reason such as this certification item which is a continuing item that the particular document upon which the Commission bases it's decision . . . I was never clear that the Commission rules in those circumstances required a waiver of the late submission. I think what you're saying is that it does, and that may well be the Commission's interpretation. I guess I was raising the point because it does have to mean that the Commission's rules have been bound to not consider matters on an agenda such as this if they come in after the date for submission of materials as this came eighteen hours before the submission but had it come in Friday afternoon late it would mean that the Commission rules would prohibit taking it up today. And it would seem to be that's the situation not necessarily here and certainly can waive it at any point. It would seem to me that it puts the Commission, that the Commission, by it's rules is binding itself in a way that I've never been quite sure why it wanted to do that, but I think that is consistent with prior interpretations.

CHAIRMAN FRIEDERSDORF: I think it is important that we consider the matter today. It is very timely because the audit is supposed to start on, as I understand, on Monday, the primary is on Tuesday, also the importance of whether or not the Committee regains it's eligibility I think is very timely. So, the Chair would entertain a motion to suspend the rules . . .

VICE CHAIRMAN MC GARRY: I so move. I agree with you, Mr. Chairman. I will, accordingly, move that we suspend the rules for the late consideration of Agenda Document #80-189.

CHAIRMAN FRIEDERSDORF: All those in favor of Commissioner McGarry's motion will indicate by saying "aye" . . . "aye" . . . opposed. The vote indicates 5-0 in support of suspending the rules. Commissioners McGarry, Friedersdorf, Aikens, Reiche and Harris voting "aye," Commissioner Tiernan absent.

CHAIRMAN FRIEDERSDORF: Ken, I don't have the telegram before me. Can the Counsel tell us how long a postponement the Committee requested on the commencement of the audit?

BOB BOGIN: Well, I believe that it would not be appropriate to do an audit. They didn't ask for any determinate date.

CHARLES STEELE: I think the implicit request was that the audit be postponed until after the primary. But there is no specific. They just say that the audit scheduled for June 2nd not go forward.

CHAIRMAN FRIEDERSDORF: I think that the Counsel's recommendation with regard to the request for reestablishing eligibility is a correct one and I intend to support that. However, on the request for postponement of the audit, I think it would be appropriate since the primary is on Tuesday and we're planning to start the audit on Monday that could conceivably interfere with the primary process. I would support the audit starting after the primary if the majority of Commissioners agree. Commissioner Harris.

COMMISSIONER HARRIS: The request for an audit postponement is only until the question of recertification has been resolved. The last part of the last paragraph of the telegram says further, "If, as I believe is the case, Mr. LaRouche has requalified for matching funds eligibility, I believe that a second audit commencing as it does in the midst of our campaign and requiring a commitment of significant campaign resources for its successful comple-

tion, is premature. For this reason, I also request the Commission consider postponing the second audit at least until the question of recertification of Mr. LaRouche has been resolved." So presumably, if the question of recertification was resolved against the LaRouche Committee, they have not, on the contingency, requested a postponement.

CHAIRMAN FRIEDERSDORF: If the decision was negative, they wouldn't have any problem with the audit starting on Monday?

COMMISSIONER HARRIS: That's the way I read it.

CHAIRMAN FRIEDERSDORF: Commissioner Reiche.

COMMISSIONER REICHE: Mr. Chairman, I think this is also tied in with the request which they have made for a report of the findings of the threshold audit, because it's referred to at bottom of the second page of this telegram, so I think it is linked with that as well.

CHAIRMAN FRIEDERSDORF: I think that matter may be considered in Executive Session.

COMMISSIONER REICHE: Yes, correct. But I'm just saying they make reference to it.

CHAIRMAN FRIEDERSDORF: Yes.

COMMISSIONER REICHE: And that's why I just wanted to make note for the record that it is linked in their mind with their other request.

CHAIRMAN FRIEDERSDORF: Any further comment by the Commissioners? If not . . . Commissioner Aikens.

COMMISSIONER AIKENS: May I ask just one question? On the court case, did the Attorney General in Michigan rule prior to the court case, Bob, do you know, that the election was not the primary?

ROBERT BOGIN, OFFICE OF GENERAL COUNSEL: He ruled by not acting. He agreed that the party didn't have to comply with Michigan law and he basically didn't defend. And he was sued by a State Senator against the Secretary of State asking him to enforce them.

COMMISSIONER AIKENS: I see.

CHARLES STEELE: He made the determination that he would not do as the Michigan statute seems to say that he

should, which is to set rules for delegate, a portion of the delegates and so forth. The District Court basically upheld that on the basis of prior Supreme Court rulings that the setting of delegates is an internal associational right of the party itself and the suit was brought to mandamus him and to command him to carry that out, that statute, and he said that he did not think he could, and the Court upheld that.

CHAIRMAN FRIEDERSDORF: Commissioner Reiche.

COMMISSIONER REICHE: Am I reading the Chairman correctly in terms of the commencement of the audit along these lines. Namely that if that commencement were delayed until perhaps sometime toward the end of next week after the June 3rd primaries are completed, that you would then support the commencement of it at that stage?

CHAIRMAN FRIEDERSDORF: That's what I said previously but Commissioner Harris read that telegram which I don't have a copy of here before me, but I believe that he correctly interpreted that if the Commission rules negatively on the reestablishment of eligibility, t[illegible] commencement of the audit is not, they are not objecting to the commencement of the audit at the time it is scheduled, which is Monday as I understand it.

COMMISSIONER REICHE: I just didn't know whether his observation changed your opinion.

CHAIRMAN FRIEDERSDORF: Yes it did.

COMMISSIONER REICHE: Yes, okay. If that be the case and if a motion would be appropriate Mr. Chairman,

CHAIRMAN FRIEDERSDORF: It would be.

COMMISSIONER REICHE: I would move that we approve the recommendation of the Office of General Counsel and find that Mr. LaRouche's certification, or his eligibility rather, for public funds has not been reestablished and further that we direct that the audit be commenced on Monday, June 2nd.

CHAIRMAN FRIEDERSDORF: Commissioner Harris.

COMMISSIONER HARRIS: This memorandum doesn't go into all of the items that I would like to be informed on. It rests primarily on the interpretation of Section 9033 which

seems to me a doubtful matter. I would like fuller development on the matter of the caucuses which were, in fact, held out there by the Democratic Party of Michigan. As you say, in late '79, the Democratic Party concluded that because of a conflict with the Democratic National Committee Rules, that instead of conducting the sort of primary provided for in Michigan law, it would select its delegates through a caucus. Well, if they in fact I believe went ahead and had such a caucus or caucuses they did select the delegates, what votes did LaRouche get there? It seems to me the memo should set out those developments, what happened at the caucuses, and what votes LaRouche got. The proposition that this May election was not a primary within the definition in the statute seems a whole lot clearer to me than the question of the interpretation of 9033. That is not developed in this memorandum because of your primary reliance on your interpretation of 9033. I would like to ask that this go over until the end of the meeting, that in the meantime we be supplied with a memo setting out the facts about these Michigan caucuses and also, a copy of the Decision of the District Court in *Ferency v. Austin.*

MR. STEELE: To deal with those, I apologize for not sending around the District Court Opinion. I had meant to direct that it would so be done and it seemed to me that the Commission should have it. It has large amount of background with regard to the . . . I don't think it gives the information that you are requesting about what the results of the caucuses were, because that was not really before the District Court, but I do apologize for not getting that Opinion around. Again, we were working on fast time schedules and so forth. One of the problems is that again, we were working to try and get this up to the Commission for this agenda. One of the problems with trying to find out is again, that what we can find out is basically unofficial through telephone calls and find out some materials about the caucus and its results. I would not be able to state now, and I don't think it does state in the District Court Opinion, what the results of the caucus

were. We put at the end of the memorandum, a second, a last paragraph there, that I think at least touches on the issue that you raise with regard to whether or not this was an election and we could amplify it. Again, we have had some discussions in our Office and some differences back and forth about it. Part of the problem is that we are not entirely sure what happened out there and you really do have a very unique set of circumstances here. Of course, basically, in our reading and I think the Commission has accepted this earlier, with regard to the 10% and 20% Rule that the legislative history is quite clear that in doing that that you are not contemplating caucuses. The passage of the 1976 Amendments was not intended to use the results in a caucus for purposes of the 10% or 20% Rule. But the 10% or the 20% Rule was specifically directed at balloting situations where you have specific number of votes cast. So that the question, we did not deal with the questions, of whether or not the caucuses here were an election because though they may be an election within the overall meaning of the statute, it seems to us clear, and I think the Commission dealt with that earlier in January, that the caucuses are not to be considered. And I think the legislative history is pretty clear on that, for purposes of the 10% or 20% Rule. There is the other question that we raised there of whether , this is, given the circumstances, of whether this is a precedent presidential primary election within the meaning of the statute. Again, you have a unique set of circumstances here, and it does not seem to be something that the District Court Opinion or the earlier Supreme Court precedents deal with. In other words, you have here a situation where several of the contenders have withdrawn, and, the party has indicated that it will not participate in the balloting as a method for delegate selection. None of that would seem to me to say necessarily that the State could not conduct a presidential preference primary separate from the state. In other words, that the Ferency case and its predecessor, *Cousins v. Wigoda* in the Supreme Court seem to go to the fact that the State cannot dictate how a party apportions its

delegates but does not say that the State cannot hold a presidential primary election, a preference election, for the candidates and the party. And indeed, through the States vary, there are those States which have a system whereby the Secretary of State can put you on the ballot and you cannot get off. So that in at least some instances there is that situation. That, accordingly, at least in my feeling, makes it a very difficult, a question with a lot of considerations which we really didn't have time, I thought, to canvass fully on the question of whether or not under the statute and under the 20% Rule, this necessarily should be considered a primary. It seems to us that given these circumstances where you have an election scheduled as a delegate selection election, then the party refuses to participate and leading candidates withdraw, you have an opinion of the District Court indicating that as a delegate selection primary that it cannot be used for that, that you certainly have at least as a possible alternate basis for your holding. that that is not a presidential preference primary within the meaning of the statute. Again, you have a very delicate question there I think, in the sense that you are balancing the rights of private associations and right of the State to conduct elections and exactly what the statute is driving at here is not entirely clear because, of course, you have the overall definition of election with later history of the '76 with the 10% and 20% Rules laid over on that definition so that that definition doesn't answer all questions. It does seem to me that it's a possible basis that any Commissioner could conclude that this was not an election, given the circumstances here, that it was not an election within the meaning of the statute.

COMMISSIONER HARRIS: I tend to think that's a sounder ground for denying reestablishment of eligibility than the one you advocate. The trouble I have with you on the interpretation of 9033 is first, the statute specifically has got the words "for candidates" here. Your interpretation would simply read out of the statute the words "for candidates." In fact, it says "for candidates of the same party." I don't think the colloquy involving Senators

Clark and Taft is particularly persuasive because they weren't focusing on this issue, so that when Senator Taft spoke of "votes cast," he wasn't using it in any technical sense. That could have simply been pure chance that he used that phraseology. The 20% test—the purpose of it presumably is to indicate that the candidate in question has reestablished himself as a serious contender. And for that purpose it seems to me that his competition consists of the other candidates that get votes. He's running against the other candidates. He's not running against "uncommitted" or "none of the above." It seems to be quite reasonable to say that he reestablished his eligibility if he gets 20% of the total number of votes cast for candidates of his party assuming that it's a real election.

CHARLES STEELE: Well, again, I don't think that it's something that is necessarily crystal clear. It seems to us that from what we have managed to learn of Michigan law, that the uncommitted line is put on by State law and is treated as a candidate line, as one of the lines on the ballot for you to go to, and that if you use instead, the interpretation argued by Mr. LaRouche's Committee, you would decide that write-in's, for instance because they would not be candidates within the meaning of the statute, that write-in votes would not be determined in the 20% Rule and that basically what you have in this form of balloting is you have the expression of a preference and one of the preferences offered to the voters is the line that says uncommitted. I mean it's specifically put on the ballot at the behest of the State law. If you go to the requirement that it be candidates within the meaning of the statute you limit the 20% Rule far too much because in effect you are saying it is not the lines on the ballot, it's only those people who are eligible for funds. Again, technically Governor Brown has withdrawn himself as a candidate. He's not a candidate for the purpose of receiving matching funds. Essentially it comes down to the fact to the question of whether you have to assume—is whether you have to assume that Congress, in using the term candidate throughout the statute was using it in the technical sense

that it had defined it at. It seems to me that it is a very persuasive case here that they were not. The '76 legislation came afterwards. It spoke to balloting. It clearly did not use the caucus language which is in the overall definition of election because again, they were quite clear that they were talking about 20%. Your 20% Rule is not based on caucuses. So in effect the rule you would come to is that in this subsection they were not using the word candidate within the technical term as it is defined in the statute, and that happens so frequently in legal interpretations and there are a lot of opinions that say the same word does not necessarily mean the same thing in different portions of the statute. Again, with regard to the question of whether it is an election, I think that there is doubt on that question too. As I say, we have set it forth as an alternate ground here, that seems to us, to support the Commiseion's decision, the Commission's recommendation that we made.

CHAIRMAN FRIEDERSDORF: Commissioner Reiche.

COMMISSIONER REICHE: I agree with Commissioner Harris that perhaps the choice of words in the statute is unfortunate because when you start talking about 4 candidates, yes, it is possible to deduce from that that it means candidates as defined in the statute. But I think you have to look here to the underlying rationale for this reestablishment of eligibility—namely, as Counsel has pointed out to us, that a candidate has once again established himself or herself as a serious candidate. You could very well have a scenario in which you could have uncommitted votes of 300,000 and yet you might have for one candidate this 8,000, you might have for another, let's say, 20,000 and under those circumstances I would argue that the individual who receives the 8,000 has reestablished his viability as a serious candidate. So that when I look to the underlying purpose of this 20% requirement even though, yes, I wish the wording were somewhat different in the statute, I would think you have to come out under these circumstances, with the conclusion that he has not reestablished it where you fall so far short of the 20%.

CHAIRMAN FRIEDERSDORF: Harriet.

EX OFFICIO ROBNETT: I agree with that. I think that that basically establishes the serious candidacy. It's an automatic—he's automatically reeligible when he establishes the 20% and I think that arises really out of the showing of the overall candidacy. I think there's another part of the statute where the Commission may find under a discretionary sort of basis, presumably under some caucus or some other arrangement, that he has reestablished his eligibility here so I agree that the 20% automatic thing is one that speaks to the primary but I think the statute perceives the possibility that not every situation will be a primary and therefore, it has a discretionary type of position with the Commisison.

CHAIRMAN FRIEDERSDORF: Commissioner Harris has raised a question of having further materials submitted and vote on this at the end of the session. Is it Commissioner Reiche's desire to have a vote on this now or would you want to withdraw that motion?

COMMISSIONER REICHE: I don't ever want to preclude a Commissioner from obtaining additional information assuming that we could still resolve the matter today. But I have to say quite honestly that I don't think that the additional information to be introduced here is going to change matters but I don't want Commissioner Harris to be foreclosed from getting the additional information, assuming that we could do it today, because there is an urgency to this matter, and if we could do it today and then resolve the matter later, Mr. Chairman, under those circumstances I would be willing to withdraw the motion but I think we obviously do have to resolve it today.

CHARLES STEELE: Again, with regard to the additional information, as I say, I apologize for not sending around copies of the District Court's decision because we obtained that and we should have. I do not think that we will be able, in the course of today, we may be able to have some more telephonic communication that would give us a further description of what the caucus procedure actually utilized was. As I indicated, I don't know precisely what

information we would want to seek in that, or what we would be able to get, but it seems to be impossible with regard to that to be sure of getting anything today on that.

CHAIRMAN FRIEDERSDORF: Commissioner Harris.

COMMISSIONER HARRIS: I don't think we need the figures on the caucus anyway. They are not claiming reestablishment of eligibility on the basis of the caucus. If that were the election rather than the primary, they are not claiming they would be entitled to reestablishment.

COMMISSIONER REICHE: Under those circumstances, I will withdraw the motion with the understanding that not only would we have an opportunity to review the Opinion. Lunch time appears to be the only time available to us. And also, if Counsel would verbally communicate back to us, because I can't see time for a memorandum or anything of that type, but if they could verbally give us additional information such as requested by Commissioner Harris. Under that understanding I withdraw the motion.

CHAIRMAN FRIEDERSDORF: Commissioner Reiche withdraws his motion to approve Agenda Document No. 80-189 pertaining to the LaRouche matter requesting reestablishment of eligibility. The Chair will now suspend consideration of Item #3 on the agenda, concerning presidential certifications and inform the Commissioners that this item will be considered at the close of the final item on the regular meeting of Thursday, May 29. It is the Chair's intention to have a vote on that before we adjourn today.

PARTIAL TRANSCRIPT, OPEN MEETING OF THE FEDERAL ELECTION COMMISSION MAY 29, 1980 P.M. SESSION

DISCUSSION OF AGENDA DOCUMENT #80-189, "Lyndon LaRouche Request for Reestablishment of Eligibility"

CHAIRMAN FRIEDERSDORF: The regular meeting of the Thursday, May 29, 1980 Federal Election Commission will come to order. The next item on the agenda is the

proposed general election public financing regulations, but before we take that up, I would like to inquire of the Commissioners if all of you that have had the opportunity to see the material pertaining to the LaRouche request for reestablishment of eligibility, and if so, are they prepared to return and dispose of that matter at this time. Counsel?

MR. STEELE: I would just like . . . Bob would like to just clarify the record and indicate that as I think that everyone knows, because they have been distributed, there are actually two telegrams that we received. Our memo was drafted in response to the May 20 telegram. There is a later telegram with some differences in the wording. Well, anyway, Bob will address that.

BOB BOGIN: We apologize for not circulating the second telegram. Hopefully everybody has one in front of them. The paragraph that is a little ambiguous is the last paragraph in that second telegram.

MR. STEELE: Does everyone know what we mean by the second telegram? The telegram is dated 5/27 and was received here on the morning of 5/27 and we got it downstairs in our office yesterday morning, and so it was a little bit slow in getting it distributed around. The easiest identification on it is the top line of it that's got all the numerals and then it says, 5/27/80 and I guess it then says 804, I can't read it but the other one is dated 5/21.

BOB BOGIN: There was a little ambiguity whether or not the Commission could, should postpone the audit scheduled for June 2nd. The ambiguity rests still in the second telegram in that last paragraph, which if you read it, you can see the ambiguity but the last sentence says "for this reason," and that refers back to the first sentence talking about commencing an audit in the midst of the campaign, in the midst of the primary June 2d. I also request that the Commission consider postponing the second audit at least until the question of recertification of Mr. LaRouche has been resolved. We don't . . . the Office of General Counsel, does not take any position. We feel that the Commission can go either way whether or not that means they should postpone it or not postpone it.

MR. STEELE: It was just at this morning's colloquy, I was uncertain whether Commissioner Harris did view it in referring it had the benefit of realizing there was a second telegram. It seems to me that the first sentence of that last paragraph does raise the issue of the second audit commencing "it does in the midst of our campaign, require significant campaign resources for successful completion are premature." It seems to hinge, the whole request still seems to hinge on the, if as I believe, he is requalified or at least until the question of recertification has been resolved. So the request still seems to hinge on that issue, but it did seem to raise the other issue that Chairman Friedersdorf had spoken to and I just want to make sure that the record was clear that we had these two telegrams in-house. When we were preparing the memorandum, we did not have the second telegram to use as a reference.

CHAIRMAN FRIEDERSDORF: I would just like to add that during the noon recess I was advised by the LaRouche Committee that regardless of how we resolve the recertification question, they are requesting the postponement of the June 2d commencement of the second audit because of possible interference with the primary of June 3d and I would just state for my own . . . My own view is that a short postponement of several days post June 3d, would give me no problem.

VICE CHAIRMAN MCGARRY: Mr. Chairman.

CHAIRMAN FRIEDERSDORF: Commissioner McGarry.

VICE CHAIRMAN MC GARRY: I certainly support that and I wondered at the time that that was being mentioned, whether or not it did. I interpreted their telegam to indicate that they would have problems no matter what, if our audit begins on June 2d. I think it is only fair to steer clear . . . I believe Mr. LaRouche is entered in more than one primary and I think that we would not be at all out of order to give some kind of a postponement . . . to steer clear of those primaries which are all on June 3d.

CHAIRMAN FRIEDERSDORF: That's right. Commissioner Reiche.

COMMISSIONER REICHE: He's at the door, but Mr.

Chairman, I am wondering what the reaction of Bob Costa is.

CHAIRMAN FRIEDERSDORF: Mr. Costa?

BOB COSTA: Mr. Chairman, the audit division would not have a problem with a postponement of a short duration at all.

CHAIRMAN FRIEDERSDORF: Commissioner Aikens.

COMMISSIONER AIKENS: Could I ask Bob . . . would you consider the 4th a better date or the 9th?

BOB COSTA: I would think the following week would be more reasonable.

COMMISSIONER AIKENS: The following Monday, so you would have a full week rather than . . .

BOB COSTA: Yes, yes, that would compel us going to New York and to move it one full week.

COMMISSIONER AIKENS: I would think that you might get better cooperation . . . I think that would be a good move.

VICE CHAIRMAN MCGARRY: I am prepared then, to so move then, Mr. Chairman, if a motion would be in order that in view of Mr. Costa's statement, that we postpone the resumption of the audit of the LaRouche campaign . . . postpone it from the scheduled date of June 2d to June 9th.

CHAIRMAN FRIEDERSDORF: Your motion would amend the recommendation of the counsel that would proceed with the audit as scheduled by postponing that date to June 9th. Correct?

VICE CHAIRMAN MCGARRY: Yes, I think and I might, I might want to clarify that if I may. I think it is important to make it clear depending on how the recertification question comes out that if it should . . . the recertification be denied, then I think that should be clear in any correspondence. I would presume this would be put in writing and I have repeatedly indicated that I think all these things should be in writing . . . it should be spelled out that the postponement is in no way tied to the recertification question.

CHAIRMAN FRIEDERSDORF: Perhaps it would be better

procedure to hold that motion right now on the audit question and dispose of the first question which is the more important . . . which we recessed and laid it over this morning and Commissioner Reiche, if you want to—

COMMISSIONER REICHE: I would like to renew my motion that the Commission find that Mr. LaRouche has not reestablished his eligibility for public funds as a consequence of the Michigan, whatever you wish to call it . . . primary, election, or . . . because there seems to be some question about that.

CHAIRMAN FRIEDERSDORF: Commissioner Reiche has moved adoption of recommendation I in the agenda document #80-189, the LaRouche request for reestablishment of eligibility. All those in favor will indicate by saying "aye." Aye. Opposed? It appears to the chair that the vote is 5-0 with Commissioners Harris, Reiche, Aikens, McGarry and Friedersdorf voting "aye," Commissioner Tiernan absent. The vote now occurs—

COMMISSIONER HARRIS: Mr. Chairman, I would like to say that my vote rests more on the conclusion that the May 20 proceeding in Michigan was not an election for purposes of 9033 than it does on the interpretation of that section set forth in the General Counsel's memo.

CHAIRMAN FRIEDERSDORF: Thank you. The record will show it was so indicated. The vote now occurs upon a motion by Commissioner McGarry. Recommendation II contained in the General Counsel's recommendation on the LaRouche request for reestablishment of eligibility, as amended, which provides that the audit will proceed on June 9th. All those in favor will indicate by saying "Aye." Aye. Opposed? The vote appears to be 5-0, with Commissioners Harris, Reiche, Aikens, McGarry and Friedersdorf voting "aye", Commissioner Tiernan absent. What recommendation does the Counsel have on notifications since this is a matter of some urgency?

MR. STEELE: I would think that what we would do, would be to circulate a letter hopefully this afternoon or early tomorrow morning setting forth such . . . It seems to be a fairly simple letter. If the Commission wished, we

could respond by telegram. It seems to me that the postponement . . . I don't know how Bob ordinarily handles something like that when there has been for purposes of postponement, but perhaps he can call them and they could confirm that in the letter. If you wish, we could send it by telegram. Telegrams are hard to keep track of but we can do as the Commission wishes, but again, such a postponement should be confirmed by letter and Bob could notify them of the particulars.

CHAIRMAN FRIEDERSDORF: I think it's expeditious to notify as soon as possible.

* * *

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that the foregoing document is a true and accurate transcript of the Federal Election Commission discussion on the "Lyndon LaRouche Request for Reestablishment of Eligibility," held at the Commission Meeting of May 29, 1980.

Attest:

/s/Marjorie W. Emmons
MARJORIE W. EMMONS
Secretary to the Commission

6/26/80
Date